EUTHANASIA: LEGISLATIVE PERSPECTIVE IN INDIA

Arvind Kumar, Research Scholar, Department of Law, Kurukshetra University, Haryana

Prof. Ajit Singh Chahal, Department of Law, Kurukshetra University, Haryana

ABSTRACT

Euthanasia -the act or omission causing the death of a person suffering from an incurable or terminal condition, to relieve intractable suffering -remains one of the most contested questions at the intersection of constitutional law, criminal law and medical ethics in India. Unlike the Netherlands, Belgium or Canada, India has no dedicated euthanasia statute; the field has instead been shaped almost entirely by judicial pronouncement, principally Aruna Shanbaug v. Union of India and Common Cause v. Union of India, with Parliament playing a secondary, reactive role. This paper traces the legislative history of euthanasia in India, situates the 2018 and 2023 Supreme Court rulings within that history, examines the stalled Medical Treatment of Terminally Ill Patients Bill, 2016, and argues that the absence of a comprehensive enactment leaves individual autonomy in this field dependent on evolving judicial guidelines rather than a stable legislative framework.

1. Introduction

The word 'euthanasia', derived from the Greek eu (good) and thanatos (death), denotes the practice of ending a life to relieve pain and suffering.[1] Euthanasia is conventionally classified along two axes: active versus passive, and voluntary versus non-voluntary/involuntary. "Active euthanasia involves a positive act -typically the administration of a lethal substance -intended to cause death, whereas passive euthanasia involves the withdrawal or withholding of life-sustaining treatment, allowing the underlying condition to take its natural course".[2] Voluntary euthanasia is carried out at the express wish of a competent patient, "while non-voluntary euthanasia concerns a patient incapable of expressing a wish, such as one in a persistent vegetative state. In India, active euthanasia is squarely prohibited and amounts to culpable homicide or murder under Sections 302 and 304 of the Indian Penal Code, 1860" (now Sections 103 and 105 of the Bharatiya Nyaya Sanhita, 2023)", regardless of the patient's consent, since consent is not a defence to these offences.[3] It is passive euthanasia, together with the advance medical directive or 'living will', that has occupied the centre of India's legislative and judicial debate, and forms the subject of this paper.

2. The Constitutional Starting Point: Article 21 and the Gian Kaur Dilemma

Any legislative approach to euthanasia in India must reckon with the constitutional position on the right to die, which the Supreme Court addressed nearly three decades ago in Gian Kaur v. State of Punjab. "In P. Rathinam v. Union of India, a two-Judge Bench had held that the 'right to life' under Article 21 of the Constitution included a 'right to die', and consequently struck down Section 309 of the Indian Penal Code, which penalised attempted suicide, as unconstitutional".[4] A Constitution Bench in Gian Kaur overruled this reasoning, holding that the 'right to life' is inherently inconsistent with a 'right to die', since the former is a right to live with human dignity that cannot be extended to its own extinction. The Court, however, added an important qualification: the 'right to life' includes the right to a dignified life up to the point of death, including a dignified procedure of death, and observed, without deciding the point, that this might permit acceleration of the process of death already in progress for a terminally

1 P. Ramanatha Aiyar, The Law Lexicon (3rd edn, LexisNexis 2012) 690.
2 Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1, paras 24-25.
3 Indian Penal Code 1860, ss 302, 304; s 92 IPC excludes acts causing death from the general exception for acts done in good faith for a person's benefit; corresponding provisions are ss 103, 105 of the Bharatiya Nyaya Sanhita, 2023.
4 P.Rathinam v. Union of India, (1994) 3 SCC 394.

ill or PVS patient -a distinction the Court itself characterised as one between the 'right to die' and the 'right to die with dignity'.[5] Gian Kaur's obiter observations became the constitutional foothold on which the subsequent, more elaborate jurisprudence on passive euthanasia was built, and it is against this backdrop that the Law Commission's recommendations and the two principal Supreme Court decisions discussed below must be read.

3. Law Commission Reports: The Missed Legislative Opportunity

"The Law Commission of India first examined the question of euthanasia comprehensively in its 196th Report of 2006, titled 'Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)", which recommended legislative recognition of a competent patient's right to refuse treatment and proposed a draft Bill to protect medical practitioners who withhold or withdraw treatment in accordance with a patient's wishes.[6] Concerns that the 196th Report's formulation did not adequately safeguard against misuse prompted the Commission to revisit the subject in its 241st Report of 2012, recommending a legislative framework with more elaborate safeguards, including certification by a panel of medical practitioners and notice to near relatives, while leaving advance directives (living wills) unresolved, since the Commission considered directives executed while still healthy to carry a heightened risk of misuse or premature invocation.[7] Acting on the 241st Report, the Ministry of Health and Family Welfare released, in May 2016, a draft 'Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016' for public comment -a Bill whose Section 11 expressly declared advance directives void, precisely because the 241st Report had declined to endorse them.[8] The draft Bill proposed a scheme under which a competent, terminally ill patient above sixteen could refuse further treatment, confirmed by a panel of three independent practitioners, while decisions on incompetent patients required an application to the High Court.[9] The Bill attracted sustained criticism - notably from the Vidhi Centre for Legal Policy, which argued that requiring judicial rather than medical or familial decision-making denied incompetent patients the autonomy extended to

5 Gian Kaur v. State of Punjab, (1996) 2 SCC 648, paras 24-25.
6 "Law Commission of India, Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners) (Report No 196, 2006)".
7 Law Commission of India, Passive Euthanasia — A Relook (Report No 241, 2012), paras 1.12-1.15, 2.11.
8 "Ministry of Health and Family Welfare, Government of India, Draft Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill, 2016, cl 11; Tejas Popat, 'Remedying the Malady: Laws on Advance Directives in India', Journal of Indian Law and Society Blog (12 October 2016)".
9 Draft Medical Treatment of Terminally Ill Patients Bill, 2016, cls 3, 9; PRS Legislative Research summary reproduced in 'Medical Treatment of Terminally-ill Patients Bill, 2016' (2021).

competent ones, and that defining 'terminal illness' by reference to a 'meaningful life' was dangerously subjective.[10] Despite two rounds of consultation, the 2016 Bill has never been introduced in Parliament, and India remains without a dedicated statute on end-of-life decision-making -a vacuum the Supreme Court has stepped in to fill through its Article 32 and Article 142 jurisdiction.

4. Aruna Shanbaug v. Union of India: The First Judicial Intervention

In the absence of legislation, the Supreme Court was called upon directly to address passive euthanasia in Aruna Ramchandra Shanbaug v. Union of India, a petition filed on behalf of a nurse who had remained in a persistent vegetative state for over three decades following a brutal assault, seeking a direction that she be allowed to die by the withdrawal of artificial feeding.[11] While the Court declined to order the withdrawal of feeding in Aruna Shanbaug's own case, holding that continuation was in her best interests as assessed by the hospital staff who had cared for her, it went on to hold, relying heavily on the House of Lords' decision in Airedale NHS Trust v. Bland, that passive euthanasia could be permitted in India in appropriate cases, subject to the High Court's prior approval under its parens patriae jurisdiction, obtained on the basis of an opinion from a committee of three reputed doctors nominated by the High Court after notice to the State and the patient's near relatives.[12] The judgment was significant in three respects for the subsequent legislative and judicial trajectory: it authoritatively distinguished passive from active euthanasia and confirmed the legality of the former in a proper case; it located the procedural safeguard for such decisions in prior judicial sanction rather than a purely medical or familial process; and it expressly declined to pronounce upon the validity of advance directives, since none was in issue on the facts, thereby leaving that question open for the litigation that culminated in Common Cause.

5. Common Cause v. Union of India (2018): Constitutionalising the Right and Validating Living Wills

The question left open in Aruna Shanbaug came squarely before a five-Judge Constitution Bench in Common Cause (A Regd. Society) v. Union of India, a public interest petition filed by an NGO seeking a declaration that the right to execute an advance medical directive was a

10 Vidhi Centre for Legal Policy, Analysis of the Medical Treatment of Terminally-Ill Persons (Protection of Patients and Medical Practitioners) Bill, 2016 (January 2017) 6-14.
11 Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454.
12 Ibid, paras 124-126; Airedale NHS Trust v. Bland [1993] AC 789 (HL).

facet of the right to live with dignity under Article 21.[13] The Constitution Bench, delivering four separate but concurring opinions, held that the right to die with dignity is intrinsic to the right to life with dignity guaranteed under Article 21, that passive euthanasia and the refusal of life-prolonging medical treatment by a competent patient are constitutionally permissible, and that a person of sound mind may execute an advance directive specifying the circumstances in which life support is to be withheld or withdrawn should that person subsequently become incompetent.[14] Recognising the risk of misuse, the Court did not leave the matter to future legislation but exercised its power under Article 142 to lay down an elaborate, self-executing procedure -covering execution and custody of an advance directive, its certification by a Judicial Magistrate First Class, and a two-tier medical board process (a Primary Board at the treating hospital and a Secondary Board including a member nominated by the district Chief Medical Officer), with the decision then notified to the jurisdictional Magistrate before being given effect.[15] The Court expressly directed that these guidelines would remain in force 'till, of course, Parliament brings a legislation in the field' -acknowledging that the scheme was an interim, not a permanent, arrangement pending legislation that has, years later, still not materialised.[16]

6. The 2023 Clarificatory Order: Simplifying an Unworkable Procedure

The elaborate 2018 procedure proved, in practice, cumbersome to apply. The Indian Society of Critical Care Medicine filed a miscellaneous application seeking modification of the guidelines, pointing to practical difficulties such as the unavailability of a Judicial Magistrate at short notice in a genuine end-of-life emergency and the multiplicity of witnesses and custodians required for a valid advance directive.[17] In its order dated 24 January 2023, a five-Judge Bench, again invoking Article 142, substantially simplified the 2018 scheme: the Judicial Magistrate's countersignature on the advance directive was replaced by attestation before a notary or gazetted officer plus countersignature by the treating physician; the Medical Boards were streamlined and the mandatory experience threshold reduced; and prior intimation to the District Court was removed altogether, with the hospital instead required only to inform the

13 Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1.
14 Ibid, paras 191-192 (Misra CJ); see also the concurring opinions of Sikri, Chandrachud and Bhushan JJ.
15 Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1, paras 197-199.
16 Ibid, para 195.
17 SCC Online Blog, 'Explained | Supreme Court's Order Modifying Guidelines Given in 2018 Euthanasia Judgment' (3 February 2023), discussing Common Cause (A Regd. Society) v. Union of India, 2023 SCC OnLine SC 99.

District Collector.[18] The Court's readiness to recalibrate its own 2018 directions within five years is instructive: it shows both the flexibility judicially framed guidelines allow and the instability of regulating so sensitive a field through case law rather than a deliberated statute.

7. Post-2023 Developments and the Continuing Legislative Vacuum

The workability of the simplified 2023 framework has since been tested in concrete cases. In Harish Rana v. Union of India, the Supreme Court applied the Common Cause framework to permit the withdrawal of life support for a patient in a prolonged vegetative state, in what is understood to be among the first instances of the post-2023 procedure being implemented in an individual matter rather than merely being laid down in the abstract.[19] Parallel to this, individual institutions have begun developing their own end-of-life protocols: the All India Institute of Medical Sciences, for instance, has circulated an internal draft 'End of Life Care' policy permitting patients and families to decline futile life-sustaining treatment, developed by a multi-disciplinary committee of clinicians, lawyers and ethicists.[20] While welcome as a practical response, such protocols' proliferation on a hospital-by-hospital basis, without a uniform statutory floor, risks the inconsistency across India's diverse healthcare system that a Parliamentary enactment -applicable uniformly under Entry 26 of the Concurrent List -would avoid.

8. Conclusion

India's legislative journey on euthanasia is best described as a sequence of law-reform reports that never became law, culminating in self-executing judicial directions that Parliament was invited, but has so far declined, to supersede. The Law Commission's 196th and 241st Reports, and the 2016 draft Bill that followed, together represent a considered legislative blueprint, albeit one subject to legitimate criticism regarding incompetent patients and the definition of terminal illness. The Supreme Court's interventions in Aruna Shanbaug, Common Cause and the 2023 modification order have filled the resulting vacuum with progressively more workable guidelines, but the Court has repeatedly signalled this is a stopgap, not a substitute for legislation. A comprehensive statute -addressing not only advance directives and passive

18 Common Cause (A Regd. Society) v. Union of India, 2023 SCC OnLine SC 99, paras 15-20.
19 Harish Rana v. Union of India (SC), applying the framework in Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1 as modified by 2023 SCC OnLine SC 99.
20 Hindustan Times, 'Draft Gives Terminally Ill Patients, Family an Option to Stop Treatment' (reporting on the AIIMS draft End of Life Care policy).

euthanasia already worked out judicially, but also unresolved questions such as patients with fluctuating capacity, the interface with the Mental Healthcare Act, 2017's own directive provisions, and medical board accountability -would provide the certainty and nationwide uniformity that judicially crafted guidelines cannot by themselves supply. Until Parliament acts, the right to die with dignity in India will remain a constitutional entitlement whose exercise depends on the Supreme Court continuing to draft and redraft the very legislative scheme an elected legislature is institutionally best placed to enact.