

Case Commentary - COMMON CAUSE (A REGD. SOCIETY) VERSUS UNION OF INDIA

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Abstract

Common Cause, a registered group, filed this petition in an effort to have Article 21 of the Constitution interpreted to include both the right to live and die with dignity. It also requested instructions for the State to create suitable policies that would let people with declining health or terminal illnesses to execute living wills or advance medical

directives. The Court determined that the right to a dignified death falls under Article 21 after carefully examining domestic and international precedent, including the ruling in K.S. Puttaswamy & Anr. vs. Union of India & Ors. ((2017) 10 SCC 1). A number of obviously clear effects would surely result from the recognition of human autonomy as a component of Article 21. In the recent case of Common Cause (A Regd. Society) v. Union of India, the Apex Court upheld the right of citizens to obtain living wills and authorizations from attorneys, which would indicate a person's decision to stop receiving care if they are terminally ill or in a permanent vegetative state. This decision is an ode to individual autonomy. This paper is aimed at examining the Supreme Court's order using Article 21 in the case of Common Cause v. Union of India

Keywords: Euthanasia, Right To Life, Right To Die, Indian Constitution, IPC

Case title	COMMON CAUSE (A REGD. SOCIETY) versus UNION OF INDIA
Case no	WRIT PETITION (CIVIL) NO. 215 OF 2005
Date of judgment	DECIDED ON MARCH 9th, 2018
Jurisdiction	SUPREME COURT OF INDIA
Quorum	DIPAK MISRA, CJI; JUSTICE A.K SIKRI; JUSTICE D. Y CHANDRACHUD; JUSTICE ASHOK BHUSHAN & JUSTICE A.M KHANWILKAR
Author	5 JUDGES- CHIEF JUSTICE AND OTHER JUDGES
Petitioner	COMMON CAUSE – NON PROFIT ORGANISATION BASED IN DELHI

Respondent	MINISTRY OF HEALTH AND FAMILY WELFARE
Intervenor	JAI KISHAN AGARWAL; DELHI MEDICAL COUNCIL; SOCIETY FOR THE RIGHT TO DIE WITH DIGNITY; DR. SURENDRA DHELIA; INDIAN SOCIETY OF CRITICAL CARE MEDICINE; VIDHI CENTRE FOR LEGAL POLICY
Advocate(s) representing petitioner	PRASHANT BHUSHAN
Advocate(s) representing respondent	SAURABH SHYAM SHAMSHERY, K. V. JAGADEESWARAN, PAMIDIGHANTAM SRI NARASIMHA
Advocate(s) representing intervenor	R. R. KISHORE, PREVEEN KHATTAR, SANJAY HEGDE, AND ARVIND DATAR.
Acts And Section Involved	<p>I. INDIAN CONSTITUTION, 1950</p> <ul style="list-style-type: none"> ● ARTICLE 21 <p>II. EUROPEAN COURT OF HUMAN RIGHTS</p> <ul style="list-style-type: none"> ● ARTICLES 8 <p>III. 241st INDIAN LAW COMMISSION REPORT</p>

I. Introduction

With reference to the cases Aruna Ramachandra Shaunbaug V. Union of India AIR 2011 SC 1290 and Smt. Gian Kaur V. The State Of Punjab 1996 AIR 946, a civil writ petition regarding the unconstitutionality of Sections 309 and 306 of the Indian Penal Code, 1860, was submitted to the Supreme Court in 2005 under Article 32 of the Indian Constitution. With particular focus on Article 21 of the Indian Constitution, which grants people of our nation the right to life and, as part of that right, the right to die, the issue of passive and active euthanasia was brought up in the same debate. Along with a number of other acts, sections, and arguments, the judgements of the European Court of Human Rights and the 241st Indian Law Commission report on

passive euthanasia in the context of Article 21 of the Indian Constitution were also referred.

II. FACTS OF THE CASE

This writ petition sought a ruling that, in accordance with Article 21, the "right to live with dignity" included the "right to die with dignity," as well as to ensure that those who were terminally ill or in poor condition might execute a living will or an Advance Medical Directive. Although this issue was initially brought before a three-judge bench, it was referred to a Constitution Bench because of conflicting precedents about the law governing the right to die in India. The problem can be traced back to the P. Rathinam v. Union of India case ((1994) 3 SCC 394), in which a Division Bench of the Supreme Court ruled that Section 309 of the Indian Penal Code, 1860 (IPC) (which criminalized

attempting to commit an offense) was unconstitutional and article 14 and 21 of the constitution of India is severely violated. According to the Court's ruling, the right to life includes the right to die. In *Gian Kaur v. The State of Punjab* (1996 AIR 946) the Supreme Court's five-judge panel overruled this decision, ruling that Article 21 of the Constitution's right to life does not encompass the right to death. Finally, the Court permitted passive euthanasia under exceptional circumstances in accordance with the tight standards established by the Court in the case of *Aruna Ramachandra Shanbaug vs. Union of India and Ors* ((2011) 4 SCC 454).

III. ISSUE:

A. Whether the right to die with dignity was a fundamental right within the fold of the right to live with dignity guaranteed under Article 21 of the Constitution.

IV. ARGUMENTS FAVOUR OF APPELLANT:

A. The petitioner made the case that the right to privacy and the idea of liberty both included the idea of upholding individual autonomy.

B. It was argued that using cutting-edge medical techniques to keep a patient in a chronic vegetative state prolonged their pain and suffering and allowed for an invasion of their autonomy and dignity.

C. The petitioner also asserted a connection between the right to live and die with dignity. Additionally, it argued that a person could not be coerced to accept medical treatment against their will and that the freedom to refuse unwelcome medical treatment was protected by common law.

V. ARGUMENTS FAVOUR OF RESPONDENT:

A. In their counter-affidavit, the Respondent-State claimed that while the State had contemplated regulating euthanasia, the Ministry of Health and Family Welfare had a negative opinion of the idea.

B. The Respondent contended that Article 21's guarantee of the right to a dignified life only applied to having access to food, shelter, and health care; it did not cover the right to a dignified death.

VI. ARGUMENTS FAVOUR OF INTREVENOR

A. The "Society for the Right to Die with Dignity" was able to intervene, and their application was accepted.

B. The affidavit endorsed the idea of euthanasia and placed emphasis on a peaceful death and the individual's right to decide whether to live or die in an irreversible situation. Additionally, it submitted an example "living will" and backed the concept of one.

VII. ORDER OF THE COURT:

A. In this case, the Supreme Court ruled that an individual has a right to die with dignity as part of their right to life and personal freedom under Article 21 of the Indian Constitution.

B. Therefore, this choice necessitates the removal of life-support systems for seriously ill or incurable coma patients. The court recognised the necessity of creating a will to live and permitted people to choose not to use an artificial life support system.

C. The bench drew the right to a dignified death from the privacy-autonomy-dignity triangle within the protection of Article 21.

D. The Bench also gave recommendations for how those directives should be enforced in order to maintain a balance between law and bioethics, preventing any potential abuse of those directives. In order to justify the right to enforce these instructions and authorizations from the counsel, both judges thoroughly investigated the legal, moral, and jurisprudential issues surrounding the definition of euthanasia and advance directives.

VIII. CONCLUSION

The right to pass away in dignity was deemed a fundamental right by the Indian Supreme Court. The bench ruled that passive euthanasia and the execution of living wills were both acceptable. Article 21 of the Constitution's guarantee of the right to life and liberty is useless if it does not include the individual's dignity. As time has gone on, the Court has broadened the scope of Article 21 to include individual dignity. Although there are a number of unclear issues, such as the scope of the right to life and what else included in it and the active Euthanasia part need to be addressed by our

court system in a transparent and suitable manner for a clear and crystal vision.

IX. RELATED CASE LAWS

1. P. Rathinam v. Union of India case ((1994) 3 SCC 394).
2. Gian Kaur v. The State of Punjab (1996 AIR 946).
3. Aruna Ramachandra Shanbaug vs. Union of India and Ors ((2011) 4 SCC 454).
4. Airedale N.H.S Trust V. Bland 1993 A.C. 789
5. K.S. Puttaswamy & Anr. vs. Union of India & Ors. ((2017) 10 SCC 1).
6. In re Quinlan (70N.J.10; 355 A.2d 647 (1976))

X. REFERENCE

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2. The Indian Penal Code 1860 (Ind) s 302 & 304
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4. P. Rathinam v. Union of India case ((1994) 3 SCC 394).
5. K.S. Puttaswamy & Anr. vs. Union of India & Ors. ((2017) 10 SCC 1).
6. The Indian Penal Code 1860 (Ind) s 309.
7. Smt. Gian Kaur vs The State of Punjab (1996) SCC (2) 648
8. Airedale NHS Trust v Anthony Bland [by his guardian ad litem, the Official Solicitor of the Supreme Court] (1993) AC 789 HL
9. Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454 s 140.
10. In re Quinlan (70N.J.10; 355 A.2d 647 (1976)