

## Euthanasia: Should it be Legal or Otherwise?

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There had been widespread national interest in the Supreme Court of India's judgement on a writ petition filed by Ms. Pinki Virani, seeking permission for carrying out euthanasia of her friend Ms. Aruna Ramachandra Shanbaug, former nurse of the KEM Hospital in Mumbai. Ms. Aruna is in a persistent vegetative state (PVS) for 37 years after a brutal sexual assault while on duty in the hospital. This case has been taken up as the subject of this case study.

The case study covers in detail the background to the case, and the arguments both in favour of euthanasia put forward by the counsel for Pinki Virani and against it put forward by the counsel for the KEM Hospital staff, Dean of the Hospital as well as the amicus curiae appointed by the court. Salient points of the findings of a team of medical experts that examined Ms. Aruna's condition and confirmed her vegetative state are also included.

The case study concludes by raising the following controversial and sensitive issues on euthanasia touched upon by Supreme Court in its judgement:

1. Should withholding or withdrawal of therapies for sustaining life be permissible or declared 'not unlawful' in the case of a patient in PVS?
2. Should a person's expressed wish not to have life-sustaining treatment in case of futile care or a PVS be respected when such a situation arises?
3. If the patient has not expressed such a desire, should the court respect the wishes of his family or next of kin makes a request withhold or withdraw futile life-sustaining treatments?
4. More importantly, in this case, who should take decisions on behalf of Ms. Aruna Shanbaug; her family members who abandoned her long back or the KEM Hospital staff who looked after her for 37 years?

### Comments

This is a very well written and self contained case study as it contains useful inputs on euthanasia itself. Perhaps, it would be useful if the objective of the case study with more pointed reference to issues is brought upon more sharply.

As observed by the Supreme Court, Ms. Aruna's case is a unique one among cases seeking permission for euthanasia after she went into PVS from November 27, 1973 onwards. A study of euthanasia involves three interlinked aspects - ethical, legal and social. Ms. Aruna's case goes beyond the question of active or passive euthanasia as it raises the responsibility or ownership for taking a decision on behalf of an individual who has been in a vegetative state for nearly four decades.

So the case study would perhaps be more useful if it focuses and dilates upon one of the aspects. That could provoke the student to analyse the complex and inter related issues involved to facilitate understanding of cases of euthanasia in general and passive euthanasia, in particular which was considered feasible by the Supreme Court.

A second important question is the issue of permitting euthanasia, even of the passive kind, in the country. In recent years, this subject has come to the fore as it relates to calls for protecting fundamental freedoms and rights of individuals. As India has not enacted any laws on the subject, the courts had been using precedents of earlier judgements. This is a subjective approach and unsatisfactory. This issue has to be debated in parliament for an enactment that would protect basic interest of the individual and his or her right to life. It should provide for a structural framework for carrying out passive euthanasia if and when so decided. That would provide some informed learning to the public at large on a number of issues related to euthanasia.

The third issue is the responsibility of state in enacting on issues touching upon ethical and moral issues as well as individual liberty. As early as 1988, the Law Commission of India chaired by Justice AR Lakshmanan had recommended to the Government of India the need for legalising euthanasia to allow terminally ill to end their lives. According to the report, "If a person is unable to take normal care of his body or has lost all the senses and if his real desire is to quit the world, he cannot be compelled to continue with torture and painful life. In such cases, it will indeed be cruel not to permit him to die."

Though over two decades have passed since then, India has not enacted any law legalising euthanasia. However, provoked by the debate after the Supreme Court judgement on Ms. Aruna Shanbaugh's case, on March 7, 2011 the Law Minister Mr. Veerappa Moily said the Right to Life is a right vested with a person. "Therefore, there is a need for a serious debate into the matter. It has to be examined, it has to be debated upon," he added. The dilemma of the government in enacting legislation on a sensitive issue that has religious and moral connotations is understandable. Moreover, when the rule of law in the country is far from satisfactory and enactment on euthanasia could be subject to misuse by vested interests. Thus a well drafted bill that is widely debated in the country and then legislated after suitably modifying it is perhaps the answer.

### Author's Profile

**Colonel R Hariharan** is a retired officer of the Intelligence Corps. During his career he was a specialist on Bangladesh, Burma, and Sri Lanka with special focus on insurgency and terrorism. His intelligence operational experience includes service as the Head of Intelligence of the Indian Peace Keeping Force in Sri Lanka (1987-90). He was awarded the Visisht Sewa Medal (VSM) for his distinguished services in Sri Lanka. After retirement, he has served as the Executive Director of the Madras Management Association. He is associated with the South Asia Analysis Group and the Chennai Centre for China Studies. He writes on national security issues in The Hindu and the Indian Express.