

## Editorial

### EUTHANASIA - How the Indian Judiciary Views it Today!!!

Dr.P.N.Suresh Kumar



It all happened on the evening of 27th November, 1973. Miss Aruna Ramchandra Shanbaug, a staff nurse working in KEM Hospital, Mumbai, was attacked by a sweeper in the hospital. He 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, a cleaner found her lying on the floor in an unconscious condition with blood all over. Due to strangulation by the dog chain, the supply of oxygen to Miss Aruna's brain stopped resulting in permanent brain damage.

Today, after 37 years of this incidence, Miss Aruna is 61 years of age, she is featherweight and her brittle bones can break if her hands or legs are awkwardly caught, even accidentally. 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. It was further alleged that Miss -

Aruna is in a "Persistent Vegetative State" (PVS) and her brain is virtually dead. She can neither see, nor hear anything nor can she express herself or communicate, in any manner whatsoever. She is not able to swallow any liquid food, which goes down on its own. Her excreta and the urine are discharged on the bed itself. Judged by any parameters, Miss Aruna cannot be said to be a living person. It was further 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 like a dead animal for the last 37 years. A petition was thus moved before the Supreme Court by Ms. Pinky Virani a well wisher that the hospital and others concerned be directed to stop feeding Aruna, and let her die peacefully. A three member fact finding committee was formulated by the Supreme Court to report on the actual state of Aruna. They reported that Aruna has evidence of intact auditory, visual, somatic and motor primary neural pathways. The petitioner wanted Aruna to be allowed to die - that is she wanted euthanasia to be approved by the Supreme Court. The learned Attorney General resisted euthanasia and submitted -

that Aruna has the right to live in her present state and putting her to death would be cruel, inhuman and intolerable. He further submitted that tomorrow there may be a cure to a medical state perceived as incurable today.

Euthanasia is a deliberate act or an omission undertaken to bring about death in a patient. Euthanasia is of two types: "Active Euthanasia" and "Passive Euthanasia". Active euthanasia entails the use of lethal substances or forces to kill a person e.g. a lethal injection given to a person with terminal cancer who is in terrible agony. Passive euthanasia entails withholding of medical treatment for continuance of life, e.g. withholding of antibiotics where without giving it a patient is likely to die, or removing the heart lung machine, from a patient in coma.

The difference between active and passive euthanasia is that in active euthanasia, something is done to end the patient's life while in passive euthanasia, something is not done that would have preserved the patient's life. An important idea behind this distinction is that in passive euthanasia the doctors are not actively killing anyone; they are simply not saving him. The general legal position all over the world seems to be that while active euthanasia is illegal unless there is legislation permitting it; passive euthanasia is legal even without legislation, provided certain conditions and safeguards are maintained. In India, active euthanasia is illegal and a crime under section 302 or at least section 304 IPC.

Another way in which euthanasia is categorized is "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. While there is no legal difficulty in the case of the former, the latter poses several problems.

In voluntary passive euthanasia, a person who is capable of deciding for himself, decides that he would prefer to die (which may be for various reasons e.g., that he is in great pain or that the money being spent on his treatment should instead be given to his family who are in greater need, etc.). In India, if a person consciously and voluntarily refuses to take life saving medical treatment it is not a crime. In non voluntary passive euthanasia, the person concerned is not in a position to decide for himself whether he would prefer to die e.g., if he is in coma or PVS. These cases pose real medico legal problems.

Physician Assisted Suicide: In India, physician assisted suicide is a crime under section 306 IPC (abetment to suicide). A distinction is drawn between euthanasia and physician assisted dying, the difference being in who administers the lethal medication. In euthanasia, a physician or third party administers it, while in physician assisted suicide it is the patient himself who does it, though on the advice of the doctor. In many countries the latter is legal while the former is not.

In India, both euthanasia and assisted suicide are not lawful. Moreover, it is not clarified who can decide whether life support should be discontinued in the case of an -

incompetent person e.g. a person in coma or PVS. This vexed question has been arising often in India because there are a large number of cases where persons go into coma (due to an accident or some other reason) or for some other reason are unable to give consent and then the question arises as to who should give consent for withdrawal of life support.

### **WITHDRAWAL OF LIFE SUPPORT OF A PATIENT IN PVS**

There is no statutory provision in our country as to the legal procedure for withdrawing life support to a person in PVS or a person who is otherwise incompetent to take a decision in this connection. The Supreme Court agrees that passive euthanasia should be permitted in our country in certain situations.

The Supreme Court has laid down the law in this connection which shall continue to be the law on euthanasia until Parliament makes a law on the subject. The law laid down is as under:

(i) 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, by a person or a body of persons acting as a next of 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.

(ii) Even if a decision is taken like that, such a decision requires approval from the High Court concerned. This is also in consonance with the doctrine of "parens patriae" which is a well known principle of law.

### **LAW UNDER WHICH THE COURT CAN GRANT APPROVAL FOR WITHDRAWING LIFE SUPPORT TO AN INCOMPETENT PERSON**

The High Court under Article 226 of the Constitution can grant approval for withdrawal of life support to an incompetent person. Article 226 gives abundant power to the High Court to pass suitable orders on the application filed by the near relatives or next of friend or the doctors / hospital staff, praying for permission to withdraw the life support to an incompetent person.

### **PROCEDURE TO BE ADOPTED BY THE HIGH COURT WHEN SUCH AN APPLICATION IS FILED**

When such an application is filed, the Chief Justice of the High Court should 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.

Preferably one of the three doctors should be a neurologist, one should be a psychiatrist, and the third a physician. For this purpose a panel of doctors in every city may be prepared by the High Court.

The committee should carefully examine the patient and also consult the record of the patient as well as taking the views of the hospital staff and submit its report to the High Court Bench. Simultaneously with appointing the committee of doctors, the High Court shall also issue notice to the State and close relatives e.g. parents, spouse, brothers / sisters etc., 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 should give its verdict.

The High Court should give its decision speedily at the earliest, since delay in the matter may result in causing great mental agony to the relatives and persons close to the patient. The views of the near relatives and committee of doctors should be given due weight by the High Court before pronouncing a final verdict which shall not be summary in nature.

In Aruna's case, her parents were dead and other close relatives were not interested in her ever since she had the unfortunate assault on her. KEM hospital staff has cared for her day and night for so many long years. The Supreme Court held only they were her next of friends and not Ms. Pinky Virani. Hence it was for the KEM hospital staff to take the necessary decision.

The KEM hospital staff had clearly expressed their wish that Aruna should be allowed to live. Therefore there was no question of allowing Aruna to die. . It was further held by the Supreme Court that in future if the KEM hospital staff changes its mind, then KEM hospital will have to apply to the Bombay High Court for approval to withdraw her life support.

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### *Medical Quotes.....*

"The greatest disease in the West today is not TB or leprosy; it is being unwanted, unloved, and uncared for. We can cure physical diseases with medicine, but the only cure for loneliness, despair, and hopelessness is love. There are many in the world who are dying for a piece of bread but there are many more dying for a little love. The poverty in the West is a different kind of poverty -- it is not only a poverty of loneliness but also of spirituality. There's a hunger for love, as there is a hunger for God."

**Mother Teresa**

A Simple Path: Mother Teresa