Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454

Human and Civil Rights

Right to Die/Euthanasia

Kinds of euthanasia - Active and passive euthanasia - Voluntary and non- voluntary euthanasia - Legality and permissibility - Relationship of euthanasia vis--vis (1) offences concerned under Penal Code, 1860, and (2) doctor-assisted death, explained - Held, non-voluntary passive euthanasia is permissible subject to conditions, safeguards and procedure laid down herein, while active euthanasia and assisted death continue to be illegal - Held, active euthanasia which involves administration of lethal dose to a patient, is a crime all over the world except where it is permitted by appropriate legislation - Passive euthanasia which involves withdrawal of life-saving measures, is permissible even without any supporting legislation, provided certain conditions are met and safeguards observed - Voluntary and non-voluntary euthanasia - Permissibility of voluntary euthanasia - Held, voluntary euthanasia is permissible to the extent that a person can refuse to take life-saving medicines - However, question whether refusal to take food by a patient in order to end his life is permissible, left open because petitioner in present case was in persistent vegetative state (PVS) and therefore not capable of taking any decision herself, her case thus raising the issue of non-voluntary euthanasia - Euthanasia vis--vis Penal Code, 1860 - Held, active euthanasia is an offence under S. 302 or at least under S. 304 IPC - Euthanasia vis--vis physician-assisted death - Difference, held, lies in who administers lethal dose - In euthanasia, this is done by doctor or by third person whereas in physician-assisted death, this is done by patient himself - Legal position of physician-assisted death in India - Held, would be abetment of suicide falling under S. 306 IPC, (2011) 4 SCC 454-A

Human and Civil Rights

Right to Die/Euthanasia

Non-voluntary passive euthanasia - Permissibility of - Whether settled by Constitution Bench decision in Gian Kaur, (1996) 2 SCC 648, paras 24 and 25 - Held, no final view has been taken on this issue therein, though active euthanasia and doctor-assisted suicide were held to be illegal therein (see Shortnote C), (2011) 4 SCC 454-B

Constitution of India

Art. 21 - Right to die, reiterated, not included in right to life - Hence, (active) euthanasia and assisted suicide are illegal, (2011) 4 SCC 454-C

Human and Civil Rights

Right to die/Euthanasia

Non-voluntary passive euthanasia - Procedure for permitting - Provisional procedure laid down by Supreme Court till law is enacted by Parliament - Initial decision to subject a patient to euthanasia may be taken by parents, spouse or other close relatives, and in their absence, by person acting as next friend or by doctors - Decision, however, must be bona fide - Thereafter approval must be sought from High Court by filing petition under Art. 226 - High Court to act as parens patriae - Matter to be decided by a Bench of at least two Judges - Such Bench in turn to constitute a committee of three reputed doctors after consulting such medical authorities/medical practitioners as may be necessary - Medical Committee should preferably comprise a neurologist, psychiatrist and physician - Report of Medical Committee to be made available to parents, spouse, etc. to ascertain their views - High Court to take speedy and reasoned decision keeping in view best interests of patient - Necessity of judicial oversight, held, arises because non-voluntary passive euthanasia is susceptible to misuse by greedy relatives who may be more interested in grabbing dying person's property than their welfare, (2011) 4 SCC 454-D

Constitution of India

Arts. 32 and 141 - Executive or Legislative action/inaction or gaps - Orders/directions redressing/filling - Procedure laid down for administration of non-voluntary passive euthanasia till law is enacted by Parliament, (2011) 4 SCC 454-E

Medical Jurisprudence

Death

Test to determine - Failure of cardiopulmonary functions vis--vis brain death - Inadequacy of cardiopulmonary test in the wake of scientific advancements through which heartbeats and respiration can now be revived - Held, death must now be understood as irreversible and total failure of all parts of brain i.e. cerebrum, cerebellum and brainstem - Person in persistent vegetative state (PVS), if dead - Held, such person cannot be considered to be brain-dead because brainstem is still functioning and therefore such person can support breathing, digestion, etc. without any mechanical aid - On facts held, A who was in PVS, could not be considered as dead particularly when there was some brain activity in her though very little, (2011) 4 SCC 454-F

Medical Jurisprudence

Particular Diseases or Conditions

Persistent vegetative state (PVS) - Characteristics of - Indicated - Held, brainstem remains alive while cortex becomes non-functional, (2011) 4 SCC 454-G

Human and Civil Rights

Right to Die/Euthanasia

Non-voluntary passive euthanasia - Stage at which it can be resorted to - Held, only when a patient is being kept alive only by providing life-support treatment (such as being kept on ventilator) and there is no possibility of their coming out of this state, (2011) 4 SCC 454-H

Human and Civil Rights

Right to Die/Euthanasia

Perplexity of issue - Held, is being experienced by courts and legislatures all over the world, (2011) 4 SCC 454-I

Human and Civil Rights

Right to Die/Euthanasia

Legal position in Netherlands - Euthanasia - Permissibility subject to fulfilment of certain conditions - Conditions outlined - Exceptions also indicated, which are considered normal medical practice rather than euthanasia - Passive euthanasia not considered as offence, (2011) 4 SCC 454-J

Human and Civil Rights

Right to Die/Euthanasia

Legal position in Switzerland - Assisted suicide vis--vis active euthanasia - Held, assisted suicide without involvement of a physician is legal but active euthanasia performed by doctor is not - Peculiarity of Swiss law - Non-Swiss nationals also entitled to avail of these provisions - Swiss legal position also compared with Holland, (2011) 4 SCC 454-K

Human and Civil Rights

Right to Die/Euthanasia

Legal position in Belgium - Euthanasia - Permissibility subject to certain conditions - Difference between Belgian and Dutch law also indicated, (2011) 4 SCC 454-L

Human and Civil Rights

Right to Die/Euthanasia

Legal position in UK, Spain, Austria, Italy, Germany and France - Held, in none of these countries is euthanasia or physician-assisted death legal, (2011) 4 SCC 454-M

Human and Civil Rights

Right to Die/Euthanasia

Legal position in USA - Held, active euthanasia is illegal in all States in USA but physician-assisted death is legal in States of Oregon, Washington and Montana, (2011) 4 SCC 454-N

Human and Civil Rights

Right to Die/Euthanasia

Legal position in State of Oregon in USA - Physician-assisted suicide - Conditions subject to which available to Oregon resident - Outlined, (2011) 4 SCC 454-O

Human and Civil Rights

Right to Die/Euthanasia

Legal position in State of Montana in USA - Physician-assisted death - Held, is permissible according to Montana Supreme Court verdict in Baxter case, 2009 WL 5155363 (Mont 2009), (2011) 4 SCC 454-P

Human and Civil Rights

Right to Die/Euthanasia

Legal position in States other than States of Oregon, Washington and Montana in United States - Active euthanasia and physician-assisted death are not legal - Texas however has provided for withdrawal of life support measures from terminally ill patients where such treatment is considered futile or inappropriate - Some States have made provisions for a living will under which a person can make an advance declaration how he should be treated in case he is unable to take decision due to illness or incapacity, (2011) 4 SCC 454-Q

Human and Civil Rights

Right to Die/Euthanasia

Living will - Concept of - Permissibility of, in State of Texas in USA, (2011) 4 SCC 454-R

Human and Civil Rights

Right to Die/Euthanasia

Legal position in Canada - Physician-assisted suicide - Held, is illegal - Supreme Court of Canada has also not permitted assisted suicide, (2011) 4 SCC 454-S

Constitution of India

Arts. 226 and 32 - Wider jurisdiction of High Court under Art. 226 compared to Supreme Court's jurisdiction under Art. 32 - Power to grant approval for subjecting a patient to non-voluntary passive euthanasia - Held, High Court in addition to its power to issue prerogative writs, can also issue directions or orders - Proper forum to obtain judicial approval for euthanasia is therefore High Court, (2011) 4 SCC 454-T

Penal Code, 1860

S. 309 - Attempt to commit suicide - Whether ought to be decriminalised - Held, though S. 309 has been declared constitutionally valid, yet time has come that it should be deleted by Parliament because provision has become anachronistic - A person attempts suicide in depression and hence needs help, rather than punishment, (2011) 4 SCC 454-U

Precedents

Foreign Case-law/Precedents

Foreign Precedents - Value of, in India - Held, foreign precedents are not binding but have persuasive effect, (2011) 4 SCC 454-V

Legal Maxims

Parens patriae (father of country) - Historical background of doctrine - Explained - King as father of country - Court acting as parens patriae - Held, court too can assume this role, (2011) 4 SCC 454-W

Constitution of India

Art. 32 - Maintainability - Case involving an important issue of law though no fundamental right violated - Petition under Art. 32 entertained and legal issues decided, (2011) 4 SCC 454-X

Practice and Procedure

Evidence

Video-recording - Playing of video-recording in courtroom - Practice regarding - In a case relating to euthanasia of a woman who was in persistent vegetative state (PVS) for about 37 years, a team of medical experts constituted which conducted medical examination on her to see her mental and physical condition - Medical examination video recorded and compact disc (CD) so prepared taken on court records - Video-recording subsequently played in courtroom so that all present could see her condition - Held, this course of action was taken on basis of an earlier instance of Nuremburg trials wherein also a film on some Nazi atrocities during Second World War were screened in courtroom, (2011) 4 SCC 454-Y

Constitution of India

Arts. 32 and 226 - Petition through next friend - Criteria for determination of next friend - Case of a person in persistent vegetative state (PVS) - Locus standi of a social activist who had visited patient on a few occasions vis--vis hospital staff which affectionately looked after patient constantly for 37 years - Held, it was hospital staff which could properly be considered as next friend, (2011) 4 SCC 454-Z

Evidence Act, 1872

Ss. 57, 85-B and 87 - Facts judicially noticeable - Information available on internet - Relevance of such information - P, a social activist filing writ petition in Supreme Court seeking euthanasia for a 60-year-old woman, A who was in persistent

vegetative state (PVS) for 37 years - On facts found that P could not be considered as A's next friend - However, P's antecedents ascertained by gathering information available about her on internet and social spirit shown by her, lauded, (2011) 4 SCC 454-ZA

Courts, Tribunals and Judiciary

Judicial Process

Judicial Clerks/Law Clerks/Research Assistants/Interns - Role of, in assisting Judges - Assistance given by judicial clerks and interns in present case, greatly appreciated, (2011) 4 SCC 454-ZB