



PASSIVE EUTHANASIA BILL

Terminally Ill Patients (protection of patients and medical practitioners) Bill¹

A bill to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally ill.

Terminal illness entails illness or injury that causes extreme pain or suffering to the patient, and which according to reasonable medical advice will eventually cause the death of the patient. In such cases, medical treatment only serves to prolong the process of dying.²

ACTIVE AND PASSIVE EUTHANASIA

Active euthanasia

Active euthanasia occurs when the medical professionals, or another person, **deliberately do something that causes the patient to die.**

Passive euthanasia

Passive euthanasia occurs **when the patient dies because the medical professionals either don't do something necessary to keep the patient alive, or when they stop doing something** that is keeping the patient alive:

- switch off life-support machines
- disconnect a feeding tube
- don't carry out a life-extending operation
- don't give life-extending drugs

Is their moral difference between killing and letting die?

Many people make a moral distinction between active and passive euthanasia.

¹ <http://www.mohfw.nic.in/showfile.php?lid=3863>

² <http://scroll.in/article/808096/draft-bill-on-euthanasia-says-16-year-olds-can-decide-on-withdrawing-life-support>



They think that it is acceptable to withhold treatment and allow a patient to die, but that it is never acceptable to kill a patient by a deliberate act.

Some medical people like this idea. They think it allows them to provide a patient with the death they want without having to deal with the difficult moral problems they would face if they deliberately killed that person.

“Thou shalt not kill but needst not strive, officiously, to keep alive.”

Arthur Hugh Clough (1819-1861)³

INDIA'S EUTHANASIA TIMELINE

- **2006:** The 196th report of the Law Commission of India brought on `The Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Bill 2006. The **health ministry had opted not to make any law on euthanasia.**
- **On March 7, 2011:** While hearing **the Aruna Shanbaug versus Union of India case**, the **Supreme Court laid down guidelines to process pleas for passive euthanasia.** It said till Parliament works out a legislation, the procedures laid down by the guidelines should be followed. It also **spelt out differences between active and passive euthanasia.**
- **August 2012:** The Law Commission again proposed making a legislation on passive euthanasia and prepared a draft bill called the Medical Treatment of Terminally Ill Patients (protection of patients and medical practitioners) Bill. **It doesn't recommend active euthanasia.**
- **May 2016:** **The health ministry uploads the draft bill and wants people to give their views** via email (topassiveeuthanasia@gmail.com) **before June 19, 2016**, so that it can take a decision to enact/not to enact a law on passive euthanasia.

1. LAW COMMISSION OF INDIA 196TH REPORT ON MEDICAL TREATMENT TO TERMINALLY ILL PATIENTS (PROTECTION OF PATIENTS AND MEDICAL PRACTITIONERS)⁴

³ http://www.bbc.co.uk/ethics/euthanasia/overview/activepassive_1.shtml

⁴ <http://lawcommissionofindia.nic.in/reports/rep196.pdf>



“This 196th Report of the Law Commission on ‘Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)’ is one of the novel, interesting and important subjects ever undertaken by the Law Commission of India for a comprehensive study.

The request for a study on this subject came from the Indian Society of Critical Care Medicine at a Seminar on 27th April, 2005, which was inaugurated by Hon’ble Minister for Law and Justice. The Commission agreed to study and give a Report as well as a draft Bill.

The title to this Report immediately suggests to one that we are dealing with ‘Euthanasia’ or ‘Assisted Suicide’. But we make it clear at the outset that Euthanasia and Assisted Suicide continue to be unlawful and we are dealing a different matter ‘with-holding Life- 2 Support Measures’ to patients terminally ill and, universally, in all countries, such withdrawal is treated as ‘lawful’.”

Competent patient: (Informed decision):

Every terminally ill who is a competent patient has **a right to refuse treatment** and the decision is binding on the doctors provided the decision of the patient is an ‘informed decision’ (i.e. the decision is taken by the patient who has been informed about (i) the nature of his or her nature, (ii) any alternative form of treatment that may be available, (iii) the consequences of these forms of treatment and (iv) the consequences of remaining untreated). Where a ‘competent patient’ takes an ‘informed decision’, when he or she is terminally ill, not to receive medical treatment, **such a decision is binding on the doctors and if, contrary to that, any invasive treatment is given it amounts to battery⁵ and if further the patient dies, it may even amount to murder.**

An ‘**incompetent patient**’ is proposed to be defined as **being a minor or person of unsound mind or a person who is unable** to (i) understand the information relevant to an informed decision about him or her medical treatment; (ii) retain that information; (iii) use or weigh that information as part of the process of making his or her informed decision; (iv) make an informed decision because of impairment of or a disturbance in the functioning of his or her mind or brain; or (v) communicate his or her informed decision as to the medical treatment. **Such patients are not competent to take ‘informed decisions’ about withholding or withdrawing medical treatment.”**

⁵(“At common law, an intentional unpermitted act causing harmful or offensive contact with the “person” of another.”)



2. The Aruna Shabaug versus Union of India case:⁶

“Marte hain aarzo mein marne ki Maut aati hai par nahin aati” -- Mirza Ghalib

HER STORY:

“...They were used to the 25-year-old keeping irregular hours as a nurse. The next day Shanta got a call from King Edward Memorial Hospital in Parel where Aruna worked as a junior nurse. “They said she was attacked. Who thought this could just change her life?” Mangala says.

“...On November 27, 1973, Aruna, despite feeling unwell, reported to work, where she was in-charge of the laboratory that conducted experiments on dogs. “She never liked the dogs, said they ran around her when the cages were opened,” Nirmala remembers.

However, she adds, when she suggested that Aruna request a switch to other department, Aruna refused. “She said, ‘It is my job. I can’t refuse working in a department’.”

That department was where accused Sohanlal Bhartha Walmiki worked as a sweeper. He was responsible for keeping dog cages clean, washing clothes, and sweeping the department. **Aruna had reported him for stealing and not working properly twice. A couple of days before November 27, she threatened to report him a third time.**

“Aruna had issued a memo to scare him and torn it after he left. I think that incited him to revenge,” Mangala says.

On November 27, 1973, Aruna was sexually assaulted and choked by Walmiki with a dog chain in a changing room located in the basement of the cardiovascular thoracic building of KEM Hospital .

She didn’t gain consciousness again.”⁷

Report of Examination of Ms. Aruna Ramachandra Shanbaug

I. Background

⁶ <http://www.supremecourtindia.nic.in/outtoday/wr1152009.pdf>

⁷ <http://indianexpress.com/article/india/india-others/sunday-story-a-girl-called-aruna/>



Ms. Aruna Ramachandra Shanbaug, a 60-year-old female patient was examined on 28th January 2011 by the team of 3 doctors viz.

This team of three doctors was appointed to examine Aruna Ramachandra Shanbaug thoroughly and **give a report to the Court about her physical and mental condition.**

II. Medical history

Ms. Aruna Ramachandra Shanbaug was admitted in the hospital after she was assaulted and strangled by a sweeper of the hospital on November 27, 1973.

Though she survived, she never fully recovered from the trauma and brain damage resulting from the assault and strangulation.

Since last so many years she is in the same bed in the side-room of ward-4.

Neurologically she appears to be in a state of intact consciousness without awareness of self/environment. No cognitive or communication abilities could be discerned. Visual function if present is severely limited. Motor function is grossly impaired with quadriparesis.

From the longitudinal case history and examination it appears that Ms. Aruna Ramachandra Shanbaug has **developed non-progressive but irreversible brain damage secondary to hypoxic-ischemic brain injury consistent with the known effects of strangulation. She meets most of the criteria for being in a permanent vegetative state (PVS).** PVS is defined as a clinical condition of unawareness of self and environment in which the patient breathes spontaneously, has a stable circulation and shows cycles of eye closure and opening which may simulate sleep and waking. While she has evidence of intact auditory, visual, somatic and motor primary neural pathways, **no definitive evidence for awareness of auditory, visual, somatic and motor stimuli was observed during our examinations.**

Prognosis

Her dementia has not progressed and has remained stable for last many years and it is likely to remain same over next many years. At present there is no treatment available for the brain damage she has sustained.⁸

⁸ <http://www.supremecourtindia.nic.in/autoday/wr1152009.pdf>



Now Aruna exists in a kind of semi-conscious limbo, and is solicitously looked after by nurses and doctors at KEM Hospital. She is permanently bed-ridden, curled up in an awkward foetal position.

The rapist was convicted for seven years in jail, and is believed to have started a new life in another hospital in New Delhi.

Following is the chronology of events in the shocking case of Aruna Ramachandra Shanbaug:

1966: Aruna, hailing from Haldipur, Shimoga in Karnataka, joins KEM Hospital, Mumbai as a staff nurse.

Nov 27, 1973: Aruna, 24, is assaulted physically and sodomised by a sweeper, Sohanlal Valmiki, at the hospital, who ties a dog's leash around her neck and yanks her with it.

Nov 28, 1973: A cleaner finds her lying on the floor with blood all over in an unconscious condition. It is learnt that due to strangulation by the dog's leash, supply of oxygen to the brain stopped and the brain got damaged.

Later, nurses at KEM go on a three-day strike demanding additional security and better working conditions.

1974: Sohanlal is sentenced to seven years' imprisonment for attempt to murder and for robbing Aruna's earrings.

1998: Journalist and author Pinki Virani is given permission to shift Aruna for MRI to Jaslok Hospital. However, doctors, fearing it could cause Aruna's death, retract the permission.

The same year, 'Aruna's story, the true account of a rape and its aftermath' authored by Pinki Virani is published.

Dec 18, 2009: SC admits Pinki Virani's petition for mercy killing of Aruna.

Jan 24, 2011: SC appoints a team of three distinguished doctors of Mumbai -- J V Divatia, Roop Gurshani and Nilesh Shah -- to examine Aruna thoroughly and submit a report about her physical and mental condition.

Dr Sanjay Oak, Dean KEM Hospital, Mumbai issues a statement opposing euthanasia for Aruna.

Feb 17: The team of doctors submits report to the court.

Feb 18: SC directs the three doctors to appear before it on March 2, 2011. Also to explain technical terms used in the report and share their views on euthanasia.



Mar 2, 2011: SC reserves verdict.

Mar 7, 2011: SC dismisses plea for mercy killing of Aruna. **Allows passive euthanasia under exceptional circumstances.**⁹

THE MEDICAL TREATMENT OF TERMINALLY-ILL PATIENTS (PROTECTION OF PATIENTS AND MEDICAL PRACTITIONERS) BILL¹⁰

In **August 2012**, the Law Commission again proposed making a legislation on passive euthanasia and prepared a **draft bill called the Medical Treatment of Terminally Ill Patients (protection of patients and medical practitioners) Bill**. It doesn't recommend active euthanasia.

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“A bill to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally ill.”

Therefore, the **MAIN FEATURES OF THE DRAFT BILL** are:

Clause 3 of the Bill: Refusal of medical treatment by a **competent patient** and its binding nature on medical practitioners.

⁹ <http://daily.bhaskar.com/news/MAH-MUM-arunas-story-the-pain-she-felt-that-night-1913802.html>

¹⁰ <http://www.mohfw.nic.in/showfile.php?lid=3863>



- i. Every competent patient including **minors above the age of 16 years**, has a right to decide and express desire to either withhold/ withdraw medical treatment; or start or continue medical treatment.
- ii. Such a decision is **binding on the medical practitioner**.

Provided that the medical practitioner is satisfied that the patient is a competent patient and that the patient has taken an informed decision based upon a free exercise of her or his free will and.

Provided further that in the case of minor above 16 years of age, the consent has also been given by the major spouse and the parents.

- iii. The **medical practitioner shall inform** the spouse, parent or major son or daughter or in their absence any other **relative** or person who regularly visits the patient about the need of withholding/ withdrawing treatment.

Clause 4 of the Bill: Authority to prepare **panel of medical experts: the **Director General of Health Services in the central government and Director of Health Services in each state shall prepare a panel of medical experts** for the purpose of this Act.**

1) The Director-General of Health Services, Central Government and the Director of Medical Services (or officer holding equivalent post) in each State shall, prepare a panel of medical experts for purposes of this Act and more than one panel may be notified to server the needs of different areas.

(2) The panels referred to in sub-section (1) shall include experienced medical experts in various branches such as medicine, surgery, critical care medicine or any other specialty as decided by the said authority.

(3) The Director General of Health Services may consult the Directors of Medical Services or the equivalent rank officer in regard to the composition of panel in order to ensure uniformity, as far as practicable.

(4) The panels prepared under sub-section (1) shall be published in the respective websites of the said authorities and the panels may be reviewed and modified by the authorities specified in sub-section (1) from time to time and such modifications shall also be published on the websites, as the case may be.

Clause 5 of the Bill: Medical Practitioner to **maintain record and inform patient, parent etc.: The medical practitioner attending on the patient shall maintain a record containing personal details of the patient such as age and full address, the nature of illness and the treatment being given and the names of spouse, parent or major son or daughter, the request or decision if any communicated by the patient and his opinion**



whether it would be in the best interest of the patient to withdraw or withhold the treatment. The medical practitioner shall inform the patient if conscious and the spouse, parent or major son or daughter of patient or in their absence the persons regularly visiting the patient at the hospital about the need or otherwise of withholding or withdrawing treatment from the patient.

Clause 6 of the Bill: Palliative Care for competent and incompetent patients: The Medical Practitioner is not debarred from administering palliative care. Even though medical treatment has been withheld or withdrawn by the medical practitioner in the case of competent patients and incompetent patients in accordance with the foregoing provisions, such medical practitioner is not debarred from administering palliative care.

Clause 7 of the Bill: Protection of competent patients from criminal action in certain circumstances: where a competent patient refuses medical treatment, such a patient shall be deemed to be not guilty of any offence under the Indian Penal Code (45 of 1860) or under any other law for the time being in force.

Clause 8 of the Bill: Protection of Medical Practitioners and other acting under their direction, in relation to competent and incompetent patients: Where a medical practitioner or any other person acting under the direction of medical practitioner withholds or withdraws medical treatment in respect of a competent patient on the basis of the desire expressed by the patient which on the assessment of a medical practitioner is in her or his best interest, then notwithstanding anything contained in any other law, the action of the medical practitioner or those acting under his direction and of the hospital concerned shall be deemed to be lawful provided that the medical practitioner has complied with the requirements of Section 3 and 5 (of the draft bill).

Clause 9 of the Bill: Permission to be obtained from the High Court and the procedure:

- i. Any near relative, next friend, legal guardian of patient, the medical practitioner or para- medical staff generally attending on the patient or the management of the hospital where the patient has been receiving treatment or any other person obtaining the leave of court, may apply to the high court having territorial jurisdiction for granting permission for withholding or withdrawing medical treatment of an incompetent patient or a competent patient who has not taken informed decision.
- ii. Such application shall be treated as original petition and the Chief Justice of High Court shall assign the same to a division bench without any loss of time and the same shall be disposed of by the high court as far as practicable within



a month, Provided that a letter addressed to the registrar- general or judicial registrar of the high court by any of the persons above mentioned containing all the material particulars seeking the permission under sub-section (1) shall be placed before the chief justice without delay and the letter shall be treated as original petition.

- iii. The division bench of the high court may, if deemed necessary, appoint an amicus curiae to assist the court and where a patient is unrepresented, direct legal aid to be provided to such patient.
- iv. The high court shall take necessary steps to obtain the expert medical opinion of three medical practitioners drawn from the panel prepared under section 4 and any other expert medical practitioner if considered necessary and issue appropriate directions for the payment to be made towards the remuneration of the experts.
- v. The high court shall, having due regard to the report of panel of experts and the wishes of close relations, namely spouse, parents, major children or in their absence such other persons whom the high court deems fit to put on notice and on consideration of the best interests of the patient, pass orders granting or refusing permission or granting permission subject to any conditions.

Clause 10 of the Bill: Confidentiality for purposes of section 9 (Permission to be obtained from the High Court and the procedure): The division bench of the High Court may, whenever a petition under section 9 is filed, direct that the **identity of the patient and of his or her parents or spouse, the identity of the medical practitioner and hospitals, the identity of the medical experts referred to in section 4, or of other experts or witnesses consulted by the court or who have given evidence in the court**, shall, during the pendency of the petition, and after its disposal, be kept confidential and shall be referred only by the English alphabets.

Clause 11 of the Bill: Advance Medical Directives as to medical treatment and Medical Power-of-Attorney to be void and not binding on medical practitioners: Every advance medical directive (called living will) or medical power-of-attorney executed by a person shall be void and of no effect and shall not be binding on any medical practitioner.

Clause 12 of the Bill: Medical Council of India to issue Guidelines:

(1) Consistent with the provisions of this act, the Medical Council of India may **prepare and issue guidelines, from time to time for the guidance of medical practitioners in the matter of withholding or withdrawing** of medical treatment to competent or incompetent patients suffering from terminal illness.



(2) The Medical Council of India may **review and modify the guidelines** from time to time.

(3) **the guidelines and modifications thereto, if any shall be published on the website and a press release may be issued to that effect.**¹¹

(The bill can accessed here: <http://www.mohfw.nic.in/showfile.php?lid=3863>)

Some of the suggestions from the draft Bill:

1. "When a **patient communicates her or his decision to the medical practitioner, such decision is binding on the medical practitioner,**" the draft Bill says. However, it also notes that the **medical practitioner must be "satisfied" that the patient is "competent"** and that the decision has been taken on free will.

2. There will be a **panel of medical experts to decide on case by case basis.**

3. The **medical practitioner has to maintain all details of the patient and ensure he/she takes an informed decision.** He is also **required to inform the patient whether it would be best to withdraw or continue treatment.** If the patient is not in a conscious state, he/she **needs to inform family members.** In the absence of family members, the medical practitioner needs to inform a person who is a regular visitor.

4. The draft also lays down the **process for seeking euthanasia, right from the composition of the medical team to moving the high court for permission.**¹²

According to The Business Standard, the draft bill states that

- every **competent patient, including minors above 16 years of age,** has the right to **take a decision and express the desire to the medical practitioner to withhold or withdraw medical treatment** and allow nature to take its own course.
- The **competent patient also has the right of starting or continuing medical treatment,** the draft bill said.

¹¹ <http://medicaldialogues.in/draft-bill-for-passive-euthanasia-all-doctors-need-to-know/>

¹² http://www.huffingtonpost.in/2016/05/16/euthanasia-draft-bill_n_9988522.html



- The draft bill also states that the **Director General of Health Services in the central government and Director of Health Services in each state shall prepare a panel of medical experts** for this purpose.
- The **medical practitioner attending to the patients has to maintain a record of the address, nature of illness etc.**
- The draft bill also states that **even though medical treatment has been withheld by the medical practitioner in case of competent and incompetent patients, such medical practitioner is not barred from administering palliative care.**¹³

NEWS AND VIEWS:

1. “Centre finally comes up with a draft bill on passive euthanasia” THE TIMES OF INDIA, May 15, 2016

“Mumbai: After years of debate and legal battles, the Union government has come up with a draft bill on passive euthanasia that gives patients the right to **"withhold or withdraw medical treatment to herself or himself" and "allow nature to take its own course"**.

The bill provides **protection to patients and doctors from any liability for withholding or withdrawing medical treatment and states that palliative care (pain management) can continue.**

However, the draft has **disappointed experts** who wanted **complete clarity on the concept of a living will**. A living will is defined as "a document in which a person states his/her desire to have or not to have extraordinary life-prolonging measures used when recovery is not possible from his/her terminal condition".

But paragraph 11 of the draft bill said that any "advance medical directive (living will) or medical power of attorney executed by the person shall be void and of no effect and shall not be binding on any medical practitioner".

The draft also lays down the process for seeking euthanasia, right from the composition of the medical team to moving the high court for permission.

In January, the Union government had after years of refusal done a U-turn and stated, during an on-going case in the Supreme Court that it was on the verge of framing a legislation

¹³ http://www.business-standard.com/article/pti-stories/centre-seeks-public-opinion-on-passive-euthanasia-draft-bill-116051600708_1.html



permitting passive euthanasia. The **next hearing in the case is scheduled for the last week of July.**

The **draft bill protects medical practitioners from any legal guilt** and allows them to offer palliative (pain relief) care. "**Every competent patient, including minors aged above 16 years**, has a right to take a decision and express the desire to the medical practitioner attending on her or him," says the draft bill uploaded on the ministry website.

Dr Nagesh Simha, the Bengaluru-based president of the Indian Association of Palliative Care, said, "The world over, the term 'passive euthanasia' has been consigned to the history books. Euthanasia stands for good death, and we should discuss it in greater detail (instead of debating about passive and active euthanasia)."

He said the country should work towards evolving a mechanism like brain death certification to check the patient's euthanasia plea. He also wondered if it is feasible to drag the courts to check every plea.

However, a senior doctor who didn't want to be named, said the draft bill misses the point: "It deals with legal details, but doesn't guide the doctor about how to handle a 90-year-plus patient with terminal complications from cancer or a patient suffering a third stroke. Should the doctor concerned take a chance by starting treatment or not offer any treatment at all?"¹⁴

2. **“Draft Bill on euthanasia says 16-year-olds can decide on withdrawing life support**

The Bill does not honour living wills, while experts say it is impractical and insensitive to patient suffering.” SCROLL.IN

“A terminally ill 16-year old is competent enough to decide on whether to continue further treatment or allow nature to take its own course, according to a draft of the Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill.”¹⁵

3. **ON CHILD RIGHTS:**

Child rights activists are also not too happy about it.

¹⁴ <http://timesofindia.indiatimes.com/city/mumbai/Centre-finally-comes-up-with-a-draft-bill-on-passive-euthanasia/articleshow/52283576.cms>

¹⁵ <http://scroll.in/article/808096/draft-bill-on-euthanasia-says-16-year-olds-can-decide-on-withdrawing-life-support>



Enakshi Ganguly of the Haq Centre for Child Rights in Delhi called it “ridiculous.” “We cannot sign a contract or marry before the age of 18, but you can decide to die? How can we allow a child to decide something as important as life and death?” she was quoted in Scroll.in.

Paediatrician Dr Vandana Prasad, a former member of the National Commission for Protection of Child Rights, feels that a young person is too “impressionable”. “I am too scared for vulnerabilities of young children. The child may feel that he is too much of a burden and take a decision,” she said.¹⁶

YOUTUBE VIDEOS:

- **The Newshour Debate: Dying With Dignity - Full Debate (16th July 2014):**
<https://www.youtube.com/watch?v=G4-ZWtaL3Go>
- **No 'mercy' for Aruna Shanbaug: Is India ready for euthanasia? NDTV:**
<https://www.youtube.com/watch?v=agATICX6UTQ>
- **Death debate: Should euthanasia be legalised? NDTV:**
https://www.youtube.com/watch?v=Y_FOwChggIc

¹⁶ http://www.huffingtonpost.in/2016/05/16/euthanasia-draft-bill_n_9988522.html