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**Euthanasia as a Case of Judicial
Entrepreneurship in India?**
**Analysing the Role of the Supreme Court in the
Policy Process of Euthanasia**

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Disclaimer:

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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*To my grandfather who was the happiest when around books, vanilla ice-cream and more books.
You inspire me to be a better person every single day, Tatha.*

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List of Acronyms

AC Amicus Curiae

HC State High Courts

ISS Institute of Social Studies

PIL Public Interest Litigation

PVS Permanent Vegetative State

SC The Supreme Court of India

Acknowledgements

Straight out of University with a degree in Economics, I came to the ISS to do another Masters. I knew I was not meant to sit at a desk, running regression models all day. I knew exactly what I did not want to do professionally. It has been 15 months since then. Today I submit my research paper at the ISS – a paper that I am proud of. A paper that is testimonial to the profound change that I have been through here, personally as well as professionally. A paper that was as intellectually exciting as it was challenging every step of the way. Or perhaps it was exciting *because* it was challenging. Either way, this has been a journey that I wouldn't trade for the world. I would like to dedicate this section to people who have been a huge part of this journey.

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Abstract

Euthanasia is a non-political issue in India. It does not receive adequate political attention necessary to arrive at policy solutions. This paper – the first of its kind – explores the role of the Supreme Court of India in euthanasia's policy making process. Why the Supreme Court of India? In 2011, it established passive euthanasia as a temporary law in India. This 2011 judgement in the Aruna Shanbaug case is the first and the only instance that brought euthanasia some public attention. This judgement therefore is the empirical focus of this paper.

The paper employs two techniques of discourse analysis to study the Court's system of argumentation. The two methods, Text Analysis using Gasper's Analysis Table and Frame Analysis – are complemented by other discourse techniques of metaphor analysis and lexical analysis. The results of this paper are three-fold: 1) The Court dismissed the petitioner's request for euthanasia on weak grounds, thereby setting no precedent for the 'historic' procedure it put in place. In other words, it left the decision open for the Parliament to decide. Hence, the judgement cannot be considered judicial overreach. 2) It defines euthanasia in a way that is reflective of broader societal themes. It combines this with its accepted authoritative and protective stance to find an intermediate position to balance the possible opposition to its role in the process and what it (perhaps) perceives to be an optimal solution. 3) It softens up the policy community (including the public) to the idea of passive euthanasia in India leading it towards a Parliamentary legislation. It achieves this by shaping prevalent principles, provisions and worldviews through a remarkable use of its legal instruments. This paper refers to this unconventional role of the SC as 'judicial entrepreneurship' which is also the first scholarly contribution towards research on euthanasia as a policy issue in India.

Relevance to Development Studies

Social norms, principles and processes are embedded in all development policies. While these are certainly important, they need to be kept in check if development policies are to generate desirable policy changes. It is this recognition that prompts this paper to explore the use of argumentation in the SC judgement which is a decisive step in the policy process of euthanasia in India. Through this, it takes an actor-specific approach to understand its policy dynamics where it examines the role of the SC as a vital actor in the policy arena. This paper contributes to development policy studies in general by underscoring the importance of a systematic examination of assumptions and belief-systems underlying a policy to derive coherent solutions and alternatives and to development policy studies in India in particular where policy-oriented research on euthanasia as a non-political policy issue does not exist.

Keywords

Argumentation, *Aruna Ramachandra Shanbaug*, discourse analysis, euthanasia, India, judicial entrepreneurship, non-political issue, policy agenda, policy-making process, Supreme Court of India

1. Introduction

Manual Scavenging. Prohibition of Same Sex Practices. Violation of Rights of Transgender Persons. Marital Rape. Violation of Sexual Rights of Working Women. Prohibition of Women's Entry at Places of Worship.

These represent a minute fraction of issues prevalent in India today in marked and non-subtle ways. No doubt, these are issues of public interest that need attention to create conditions for improvement or remedy. But, what unites these issues is that, unlike most others, these issues do not receive adequate political attention necessary to arrive at optimal solutions. Although some of them have certainly been discussed and debated passionately, these discussions are restricted to the public sphere and do not extend to the political sphere where decisions are made.

Euthanasia is one such issue. The most prominent definition of euthanasia is given by the House of Lords Select Committee on Medical Ethics. It is defined as “a deliberate intervention undertaken with the express intention of ending a life to relieve intractable suffering; an act which must inevitably terminate life” (Select Committee on Medical Ethics 1994: 1345-1346). Policy makers are faced with its distinct nature that has repeatedly provoked antithetical views. It has been a topic of fierce debates and till today it remains an unsettled issue, in spite of its accepted legal status in many countries (Hurst & Mauron 2003: 271-273, Mak et al. 2003: 213-215, Verbakel & Jaspers 2010: 109-139).

In India, it has not even reached a stage where it attracts continued political attention or is actively discussed in the political arena (timeline elaborated below). This means that euthanasia as an issue of public interest has not been able to successfully get on the policy agenda. It is a politically dormant issue in the sense that discussions around it are sporadic in nature (usually with developments in specific cases) and it stays in the public domain as a dominant issue for a very short period of time¹. An important question that comes to one's mind then is – how does one arrive at policy solutions for such issues that are important, yet *non-political* in nature?

Euthanasia as a policy issue managed to attract people's attention briefly in 2011 in India after the Supreme Court judgement in Aruna Shanbaug v. Union of India and others. The Supreme Court (SC) of India dismissed the individual petition seeking withdrawal of food to end Aruna's life. However, it permitted passive euthanasia in certain cases in the future with mandatory approval from the High Court (HC) in these cases. This decision was drawn from Article 226 of the Constitution and it is in place until a legislation by the parliament is brought into existence (Aruna Ramachandra Shanbaug v. Union of India 2011: 98-108).

Following this judgement, the Ministry of Law and Justice called for a report on the viability of legalising euthanasia from the Law Commission of India in 2012. The 241st report of the 19th Law Commission states “the Commission is of the view that on a reasonable interpretation, Article 21 does not forbid resorting to passive euthanasia even in the case of an incompetent patient provided

¹ An evidence of this can be search results of news articles. Upon going through articles directly related to euthanasia covered in one of the most widely read newspapers in India called ‘The Hindu’ from January 2011 to Feb 2012, we found that: 1) from Jan-Feb and Feb-March, only 1 news article was published in each time period. 2) From March-April, a total of 25 news articles were published. 3) From Oct-Nov, 6 news articles were published on the 3rd, 5th, 29th and 31st of October about a particular 21-year old seeking euthanasia.

The SC passed a judgement regarding euthanasia (which will be discussed in the coming sections) on March 7, 2011 which may explain the figure in that time period. For the months not mentioned, the results were found to be 0. This can be replicated for other newspapers. We have omitted repeated news articles in the web search, *available at*:

<http://www.thehindu.com/search/advanced.do>

that it is considered to be in his best interests², on a holistic appraisal” (Law Commission of India 2012: 31). The Law Commission submitted this report to the Government of India in 2014.

The Government of India subsequently accepted the recommendations of the Law Commission. It introduced a Bill with a proposal to legalise passive euthanasia and opened it for public opinion in May 2016. The Bill states,

Any near relative, next friend, legal guardian of patient, 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. (The Medical Treatment of Terminally-Ill Patients (Protection of Patients and Medical Practitioners) Bill 2016: 5-6)

From this discussion, we can see that the single most consequential step (from 2011 to 2016) that has brought euthanasia into the action arena is the 2011 SC judgement. As a student of public policy and governance, this brings me to enquire into the role of the SC in dealing with an intricate issue like euthanasia from a policy perspective. The objective of this research paper is to understand what role the SC plays in the policy making process of euthanasia in India which is a non-political issue that receives inadequate or no political attention. Through this paper, we aim to get an understanding of its policy making processes of formulation and implementation that have not yet been sufficiently explored. Therefore, our main research question is:

How does the Supreme Court in India play a role in policy making of euthanasia which is a non-political issue?

To answer this question in a cogent and well-reasoned fashion, it is important that we examine the beliefs and the premises upon which the SC acts. This is important because an understanding of how the SC sees itself in the policy arena with respect to other actors will inform our insights into the main question, enabling our findings to contribute towards further research on euthanasia in the Indian context in an effective manner. Therefore, the sub-question that this paper aims to answer is:

What are the main assumptions of the Supreme Court while dealing with euthanasia which is a non-political issue?

To accomplish this, we scrutinize the 2011 SC judgement text since it is the first and the only instance where the SC – as one of the actors in the policy arena – has taken an emphatic step with respect to the issue of euthanasia. For the purpose of this research paper then, it presents itself as a suitable piece of policy text for analysis. Through this, our aim is to contribute to research on euthanasia and the dynamics of its policy process, for there is very little work done in this field in the Indian context. Keeping in mind the time constraint, we focus on one key case to produce well-grounded and thorough conclusions. This will also form the foundation for studying other cases and documents at a later date.

This paper proceeds as follows: Chapter 2 provides background and context. In this chapter, we first present the literature around the (extended) role of the SC in India. Then, we present a brief outline of the SC judgement in the Aruna Shanbaug case (this is expounded in the later chapters). And lastly, we present some debates and literature around euthanasia. Chapter 3 is comprised of the framework and methodology that this paper works within. Chapter 4 and Chapter 5 analyse the SC judgement using two techniques of discourse analysis, namely text analysis and frame analysis. Finally, chapter 6 presents the conclusions of our research paper.

² The definition of “best interests” is explained by the panel of doctors appointed by the SC as follows: “Acting in the patient’s best interest means following a course of action that is best for the patient, and is not influenced by personal convictions, motives or other considerations” (Aruna Ramachandra Shanbaug v. Union of India and others 2011: 25).

2. Background and Context

I: Literature on the (Extended) Role of the Supreme Court in India

The judiciary has an important role to play in democratic setups. Studies on judicial intervention and legislative-judicial relations identify SCs as powerful and impactful institutions. For instance, results from a study conducted by Stiles and Bowen emphasize on SCs as influential actors in policy processes (2007: 103). Article 131A of the Indian Constitution gives the SC exclusive authority to review whether laws made by the parliament are consistent with the Constitution. It reads “exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central laws” (Constitution of India 2007: 65). Not just this, Article 32 of the Constitution gives it the exclusive authority to review laws made by the Parliament to uphold and strengthen fundamental rights (Constitution of India 2007: 18).

An extension of these is the SC’s provision of Public Interest Litigation (PIL) through which individuals can directly move the SC to seek redressal for violation of their fundamental rights. It came into existence in the post-emergency period and is defined by the SC in a broader sense (compared to other countries like US) to include not just public participation in law-making, but also bigger problems of state repression, governmental lawlessness and administrative deviance (Baxi 1985: 108, Bhagwati 1985: 569). This way of dealing with issues of public importance is notable, for no other apex court allows for such a provision³. It is this mechanism that allows the SC to wield greater influence today on complex social issues and their policy processes.

Justification for this expansive undertaking of the SC can be explained by three things:

1. The SC’s perceived apolitical nature which is attributed to its institutional design⁴. Apolitical, here, means that the SC is a strictly legal institution. It plays a role in decision making by interpreting the provisions of the Constitution – as they are – in reaction to issues of public interest & laws and orders of the Parliament (or lack thereof).
2. The presupposition that all three branches in a separation-of-power context sustain a considerable degree of credibility. When one or both do not succeed fully in achieving this, the role assumed by the SC is enhanced and admired (Holladay 2012: 571).
3. Historically (all over the world), legitimacy has come from the communities – people “expect the courts to interpret, declare, adapt and apply these constitutional provisions, as one of their main protections against the possibility of abuse...” (Wright 1968: 11).

The question then is: does this justification hold true for all policy issues that reach the SC for jurisdiction through PILs and writ petitions?

Dahl, in his influential work on the role of the US Supreme Court as a national policy maker, focuses on precisely this aspect of policy decisions. He argues that in cases where legal points of reference are unclear, “competent students of constitutional law, including the learned justices of the Supreme Court themselves, disagree; where the words of the Constitution are general, vague, ambiguous, or not clearly applicable; where precedent may be found on both sides; and where experts differ in predicting the consequences of the various alternatives or the degree of probability that the possible consequences will actually ensue” (Dahl 1957: 280). In addition to this, he ob-

³ Jurisdiction of the Supreme Court of India, *available at*: <http://www.sci.nic.in/jurisdiction.htm>

⁴ According to the Constitution of India, all judges (including the Chief Justice) of the SC are appointed by the President. The appointments are made after consultation with judges of the SC as well as the HCs, as the President may consider suitable. When appointing judges other than the Chief Justice, it is obligatory that he/she is consulted by the President (Constitution of India 2007: 61-62).

serves that most justices of the SC have a viewpoint on prevalent public issues which has an influence on their decisions (Dahl 1957: 285). It is in this implication, he argues, that the SC becomes a political institution with policy making authority.

Traces of this can be found in the expanding right to life (Article 21) jurisprudence of the SC in India. These diverse interpretations of right to life are seen as attempts at *good governance* interventions by the SC to uphold the *sentinels of justice*⁵ and safeguard social and political rights of individuals (Robinson 2009: 41-48). An example of this is the appeal made to the SC in Chameli Singh v. State of Uttar Pradesh. The issue in this case was the loss of only source of livelihood as a result of land acquisition by the government. In this case, the SC elaborated on Article 21 and declared that it includes not mere animal existence but also other basic human rights like right to shelter, food, water, decent environment etc. that enable an individual to grow freely without constraints (Chameli Singh v. State of Uttar Pradesh 1995). Another example can be the Vishakha case⁶ of 1997. A striking characteristic of this judgement is the SC's focus on enforcing collective rights where the SC introduced a collective remedy to protect rights of working women after a social worker was gang raped for interrupting child marriage. Such a targeted solution to the issue as a whole did not exist before (Holladay 2012: 565-567).

It is essential to recognize that there is a difference in the nature of the cases mentioned here. The former issue of land acquisition is a political issue. This is an issue that is on the political agenda and receives substantial political heed. Most literature on judicial intervention often alludes to such issues (deliberately or otherwise). Another judgement that has been widely referred to in the academic literature is the M.C. Mehta v. State of Tamil Nadu of 1996 that dealt with the issue of child labour. This also falls into the category of political issues. A key word search on the website of National Portal of India shows 3,740 results for child rights. The latter case, on the other hand, is a non-political issue. The search shows only 48 results for working women's rights⁷. This demonstrates the vast difference in the level of political heed and activity that different issues receive and highlights the range of issues the SC has taken up in its extended role.

Further, this broadened role of SCs in a separation-of-powers setting, often referred to as judicial activism, has also received criticism. The key criticisms are:

1. *Side-effects on popular branches of democracy:* If the SC acts in a way that substitutes for the legislatures and executives in decision making on public matters, they may come to rely excessively on the SC, thus neglecting their responsibilities. They may also use the SC to their advantage to gain credibility for undemocratic orders and statutes. This credibility can be achieved by tapping into the reviewing authority of SC and the legitimacy it enjoys with the public (Moog 1998: 419, Wright 1968: 6-9).
2. *Institutional Incompetence:* The SC neither has sufficient means of fact finding and information gathering nor is it in a position to make certain distinctions while dealing with public policies that the other two branches can and do make (every policy has benefits for some and drawbacks for others). Moreover, it has to rely on the legislature and executive to enforce its determinations. (Egeberg 2003: 118, Gill 2012: 212, Rajamani 2007: 293-321, Rosen-cranz & Jackson 2003: 224-245, Wright 1968: 3-6).

⁵ Phrase borrowed from Sharma (2008: 17).

⁶ Judgement of the Supreme Court of India, available at <http://judis.nic.in/supremecourt/imgst.aspx?filename=13856>

⁷ For the purpose of our research paper, it may be noted that the portal shows only 9 results for euthanasia of which the first seven results are euthanasia for animals. Search forum, available at: <https://india.gov.in/>

3. *SC's questionable accountability as policy maker*: The SC must let the elected, chosen bodies decide on public issues, unless in the most critical cases, to keep in line with the democratic structure (Wright 1968: 9-11). Holladay argues that India leans more towards a protective model of democracy where the domination of one branch over the other is prevented by creating accountable institutions (2012: 562). One of its key characteristics is sovereignty of the public which is manifested through a representative assembly. The judiciary's role here is to 'protect' the constitutional rights of people by simply interpreting laws formulated by the representative assembly. Going beyond this may lead to *judicial despotism or encroachment*⁸.

This last point arguing that the SCs must refrain from declaring policies is of particular importance to us. This line of reasoning is demonstrated not just by scholarly writers and the political elite but also in several of the SC judgments in India. For instance, Justice Katju and Justice Mathur – widely known judges of the SC – observed in 2007 that it is not within their limits to dictate policy and run the government. They added that if they do not limit themselves to their domain, a reaction from politicians will shrink the judiciary's power and independence (Robinson 2009: 49, Sharma 2008: 15).

What one can deduce from this observation is that the SCs are aware of their normative boundaries and are careful of not overreaching. Although they have been critical of the government in several cases⁹, this can be understood as an attempt by the SC to re-affirm that the legislative-judicial interaction in India is not necessarily a relationship of conflict or opposition¹⁰. Similar viewpoint is echoed in scholarly writings that argue that the Indian judiciary's role should be seen as a collaboration and not overreach (Fredman 2008, Gauri 2009). Pertinent to this is also Khosla's work which argues that judicial activism is multifaceted which means that "a range of factors ought to be considered before a decision is branded as an instance of activism" (2009: 58). As a result, "decisions may well be activist by some parameters but restrained by others" (Khosla 2009: 58).

Irrespective of whether these decisions should be considered activist or not, it would not be inaccurate to argue that the SC has taken relatively concrete actions in shaping some policy processes (like the ones mentioned above) in India's democratic setup. It has done this without presenting specific justifications for the same. In doing so, Robinson argues that "the Court seems to imply that there has been a generalized governance failure and that specific judicial interventions do not require elaborate justification" (2009: 51). This sentiment is shared by Bhagwati who sees this as an "undeniable feature of the judicial process in a democracy" (1985: 562).

At this point, it must be clarified that we have sincerely attempted to stay afloat in the vastness of American literature on the subject, and have only used it as a tool for assistance in this section. Next, we outline the 2011 SC judgement in Aruna Shanbaug case which is our empirical focus.

II: Aruna Ramachandra Shanbaug versus Union of India and others (2011)

Aruna Shanbaug worked as a staff nurse at Kings Edward Memorial (KEM) Hospital in Mumbai, India. In November 1973, she was sexually attacked by the hospital sweeper called Sohanlal

⁸ Phrases borrowed from Holladay (2012) and Gauri (2009) respectively.

⁹ For instance, see judgement by the SC in the Right to Food case 2001, available at <http://judis.nic.in/supremecourt/imgst.aspx?filename=29184>

¹⁰ Pertinent to our discussion is the procedure of PILs in India which is non-adversarial in nature. The SC interprets it as an opportunity for the three branches to work together to further people's fundamental rights (Holladay 2012: 561).

Bharatha Valmiki¹¹. He sodomized and strangled her with a dog chain during the act. The asphyxiation caused damage to the brain that drove her into an incompetent condition (medically) for 38 years (Aruna Ramachandra Shanbaug v. Union of India 2011: 2-3). In 2009, a writ petition under Article 32 was filed with the SC by one Ms. Pinky Virani (social worker) that claimed that Aruna had been living in depraved conditions and could not be considered a living person. Her existence did not display any human elements. The petition prayed for her food supply to be withdrawn to let her die peacefully (Aruna Ramachandra Shanbaug v. Union of India and others 2011: 3-4). The submissions and affidavits filed in this regard are presented in table A2, as recorded in the judgement¹².

The SC gave its judgement in March 2011 through a two-judge Bench comprised of Justice Markandey Katju and Justice Gyan Sudha Misra, after taking into consideration the submissions made by different parties and experiences from UK and the US. It declared Aruna Shanbaug to be in a Permanent Vegetative State (PVS) and not dead. It declared that it is in fact the KEM hospital staff that is Aruna's next friend and not Ms. Virani. On these grounds, it dismissed the petition with a provision that the hospital may move the HC in the future if they change their mind about letting Aruna live till her natural death.

In addition to the individual judgement for Aruna, the SC authoritatively instituted procedural guidelines to carry out passive euthanasia which is defined as withholding of medical treatment for continuance of life¹³ (Aruna Shanbaug vs. Union of India and others 2011: 41). This is despite the petitioner's failure to demonstrate any violation of fundamental rights – a SC rule for petitions under Article 32. These guidelines aim to act as safeguards against high corruption and commercialization standards of India. Thus, any future decision regarding passive euthanasia must be acted upon only after getting approval by the HCs. The HCs must consider the views of doctors and family members concerned, but these are not binding. Now, in the absence of any formal law in place in India, these guidelines establish a temporary policy solution for passive euthanasia; temporary because the SC declared that they are in place only till the Parliament takes a decision on the issue (Aruna Ramachandra Shanbaug v. Union of India and others 2011). Up to this point then, this judgement has a noteworthy position from the standpoint of its intellectual context where it established passive euthanasia in India in spite of its complex nature.

Next, we study the literature around euthanasia through a macro lens. For the purpose of our paper, we try to focus on literature engaging with euthanasia from a policy perspective.

III: Literature and Debates around Euthanasia

Discussions related to euthanasia are highly varied and diverse. This can be attributed to three factors: 1) its culturally sensitive nature, 2) ethical dimensions associated with life and death and 3) its legally complex nature that allows conflicting interpretations of relevant laws and rights. The debate on euthanasia can be broadly divided into proponents and opponents of euthanasia itself. Arguments in favour support the idea that an individual's autonomy and welfare must take precedence over societal and religious norms. This is in the case of both competent and incompetent patients, provided there are essential safeguards against possible misuse through coercion. These arguments find their footing in legal and medical provisions of right to life, right to privacy, right

¹¹ See: <http://www.dnaindia.com/india/report-why-did-supreme-court-refuse-the-mercy-killing-of-aruna-shanbaug-in-2011-2086853>

¹² This is owing to the space constraints of this paper. The entire judgement and its components are nevertheless discussed in detail in the coming chapters.

¹³ The SC differentiates between passive and active euthanasia and explains the latter as entailing use of lethal substances to kill a patient (Aruna Shanbaug vs. Union of India and others 2011: 41). This is explained in detail in Chapter 5.

to informed consent and the right to control one's own body. This view does not reflect an indifference towards interests and opinions of other relevant players. In fact, the emphasis is on identifying all available alternatives, with a clear recognition of coercive elements, to support interests of patients (Feinberg 1978, Powell et al. 1994: 169-178).

Arguments in opposition allude to different variants of the principle of sanctity of life and vitalism that forbid intentional killing of individuals. While some of these may oppose ending of life under all circumstances, some others may take a more flexible approach in selective cases where a patient him/herself appeals for it. From a policy aspect too, it is argued that it may entail critical concerns regarding safety and protection of the rights of doctors and vulnerable sections of society, different interpretations of law concerning criminalisation of murder etc. and these concerns are exacerbated in developing economies. For instance, one of the most common arguments against legalising euthanasia is that it will lead to a slippery slope¹⁴. This means that there will be, amongst other things, less attention and emphasis on palliative care in countries with inadequate health care conditions. Of course, there are opposing views that argue that instances of irremediable suffering call for legalizing euthanasia in both developed and developing countries alike. Thus, in the absence of adequate infrastructure it must be combined with policy interventions to overcome the impediment which includes provisions of adequate palliative care too (van Delden & Battin 2005: 2-12). Even though the latter view reflects a scenario everyone idealizes, reality demands that the former argument is not overlooked.

Furthermore, there also exists a distinction between passive and active euthanasia. Active euthanasia is associated with an intentional act of causing death while passive euthanasia is abstaining from making attempts that could save a patient's life. Of the two, active euthanasia is a more disputed issue. These disputations, indicated also in the above discussion, arise either out of religious and personal beliefs or its moral and institutional slants. However, this argument is often juxtaposed with the debate around abortion which is legal in many countries today and is equated with the right to privacy and autonomy. (Gangoli 2000, Jayadevan 2011: 471). It's important to note that this side of the debate does not question the rationale behind this distinction. But, the side that does argues that such a distinction is sketchy, for it cannot be sustained in practice. Decisions to end life depend on considerations that cannot be put into categories of positive or *non-positive* acts (Powell et al. 1994: 174). Rao, specific to the Indian context, sees this broad distinction as catering to policy pressures and demonstrates (using legal and moral instruments) that a positive act leading to death, in many cases, is in fact in the best interest of individuals (Rao 2011: 13-16).

Next, in engaging with euthanasia as a policy issue and the policy dynamics around it Baumgartner et al. provide a suitable starting point for our study; they argue that policy changes are closely associated with governmental attention and as this attention increases, the issues also change shape (2006: 960). The Netherlands, which is the first country to legalise active euthanasia in 2002 for terminally ill patients with extreme suffering, exhibits this aspect glaringly. Euthanasia here has expanded in scope over the years and now the Dutch government may extend the law to individuals who consider their life to have fulfilled its purpose¹⁵. Further, they highlight the relationship between issue representation and political attention which is consistent with the traditional literature on policy dynamics that argues that tools of problem definition, framing and mobilization are employed to garner political attention where it's lacking (Baumgartner et al. 2006: 962-971).

Corresponding to this, Green-Pedersen carried out a comparative study on the policy process of euthanasia in Denmark, Belgium and The Netherlands. The study shows that euthanasia as a

¹⁴ Phrase borrowed from Bernheim et al. (2008).

¹⁵ See news article dated 12 October 2016, available at https://www.theguardian.com/world/2016/oct/13/netherlands-may-allow-assisted-dying-for-those-who-feel-life-is-complete?CMP=share_btn_fb

policy issue provided tactical incentives to non-Christian parties in the latter two countries that led to its politicisation (Green Pedersen 2007: 285). It further shows that a policy solution to euthanasia was a result of party competition that framed euthanasia differently than before. This did not take place in Denmark where it was managed by the Danish Council of Ethics – a non-political body (Green Pedersen 2007: 284-287). To add depth to this understanding, it's important to note the role played by the Dutch SC before euthanasia was established by the Parliament. A study conducted by Steunenberg (1997) shows that the SC made use of the differences within the coalition government and adopted such an interpretation of euthanasia that could neither be challenged nor altered by the legislature. As a result, no opposition initiatives by the Christian Democrats were entertained leading to euthanasia's subsequent acceptance. The study concludes that the SC acted as a policy advocate in this case (Steunenberg 1997: 551-571). Contributing to this, Hays and Glick (1997) show that the right to die issue in the US did not receive much attention until the courts delivered innovative judgements that upheld this right. They argue that the courts and the media played a key role in successfully initiating legislative action. They demonstrate that states adopted these innovations within short intervals of time when they came from within, that is when the internal circumstances were favourable (Hays and Glick 1997: 497-516).

Lastly, in many countries where euthanasia (in its different forms) is legal, there has been a hint of concern regarding deaths without requests. This means that the decisions to end life without a definite appeal from the patient exceeded those that were taken on their request. This was presented in a study conducted by van der Heide et al. that shows that this was the case in major European countries which have legalised euthanasia like Belgium, Denmark, Italy, Sweden and Switzerland (2003:3). While these are said to be steps taken to relieve patients' agony, there is always a fear of misuse. In the Belgian context, Cohen-Almagor & Phil suggest encouraging physician-assisted deaths in place of euthanasia where the patient administers the drugs him/herself (2009: 200). They also raise some other concerns specific to the Belgian law but are relevant for any policy on euthanasia; for instance, can a doctor/physician recommend euthanasia to their patients or what is the protocol or procedure that hospitals and nursing homes must follow when one requests euthanasia (Cohen-Almagor & Phil 2009: 198-202).

This discussion shows that euthanasia is as sensitive and controversial an issue as it is important. It demands a policy solution that is well-informed and context-specific to meet specific needs effectively. The above discussion is largely drawn from work done in the European and American contexts. This is because there is a deficit in euthanasia-specific scholarly work produced in the South. While this is a weakness of this section, it should be noted that it also underlines the importance of a study like ours.

3. Framework and Methodology

For all analyses in general and policy analysis in particular, it is crucial that one sets fixed limits and boundaries within which analysis can be undertaken. This is especially relevant if it has a wide ranging scope. Gasper calls these limits ‘defensible principles of delimitation’ and these can be legal, administrative and procedural (Gasper 1996: 49). Keeping in mind then our research focus, we must first understand the Constitutional rules and procedures of the SC which inform its functioning and decision-making.

First, it is Article 141 and 142(1) of the Constitution that give the SC its authority. According to these, 1) the laws declared by the SC are binding on all other courts and 2) it can pass orders that it considers necessary to ensure complete justice and these orders are enforceable throughout India (Constitution of India 2007: 69-71). The Constitution also allows the SC to formulate its own rules to administer its practices and procedures with the approval of the President (Constitution of India 2007: 71). This is specified in Article 145 and the SC – in accordance with this provision – formulates a detailed set of rules from time to time, the latest being drawn up in 2013. A study of this document sheds light on the process and operation of the SC. This is instrumental to our study because it not only enables us to fully comprehend the Aruna Shanbaug judgement but also facilitates identification of its distinct characteristics from a policy perspective.

According to these rules, every matter must be heard by a Bench consisting of at least two Judges. These Judges are nominated by the Chief Justice of India. The Chief Justice also has the authority to extend the Bench if the initial Bench is of the opinion that the matter would be better dealt with by a larger Bench. Further, in the case of *unsound* individuals that is those who cannot protect their own interests the SC has the authority to remove his/her next friend or guardian from that position with sufficient evidence supporting such a decision (Supreme Court of India 2013: 11-13).

The SC also draws rules with respect to petitions, appeals, pleas etc. filed by individuals or group of individuals. However, before examining these rules it is essential to understand citizens’ access to the judiciary as a concept. For this purpose, we consider the theory of PIL that is already introduced in chapter 2. PIL provides an avenue through which individual citizens and groups can emphasise on enhanced performance of state institutions. More importantly, it facilitates them to stake a claim to their fundamental rights (Dembowski 2001: 57)¹⁶. To this extent, Gill provides a comprehensive definition: it is “a broad-based, people-oriented approach that envisioned access to justice through judge-fashioned processes and remedies. The judiciary made conscious efforts to improve access to the courts for those who were historically and traditionally excluded from the legal process with regard to the protection of their fundamental human rights” (2012: 202).

Citizens’ access to the judicial framework through PILs is ensured by making the procedure flexible, or in legal terminology liberalising the *locus standi* (Verma 1997: 6). This means that it is not mandatory that the individual filing the petition is the victim him/herself. This enables the SC to take on many issues, some strikingly unfamiliar to them. As a result, since its institution the SC has expanded its range from administrative issues to taking up a wider set of concerns like corruption, accountable environmental policy etc. (Mate 2015: 118-119)¹⁷. This has led many to argue that the SC through PIL has, over the years, come about to be an ally to the voiceless sections of society (Bhagwati 1985, Feldman 1992, Semwal & Khosla 2008, Verma 1997). This very notion

¹⁶ PIL also comprises of letters from individual citizens and groups which are considered as petition in certain circumstances. This was introduced by Justice Bhagwati and it is called epistolary jurisdiction. The guidelines for the same are published by the Supreme Court of India, *available at:*

<http://www.sci.nic.in/circular/guidelines/pilguidelines.pdf>

¹⁷ See also discussion in chapter 2.

contributes towards assuring access to the public. This is because the parliament or any political actors refrain from questioning such a provision that claims to promote social justice through a meaningful realization of fundamental rights (Baxi 1985: 121-127). It is important to recognize, however, that such a provision constantly calls for innovation on the part of the SC if it were to maintain this impression. This is because there is often a trade-off between practical considerations and theoretical opposition that they must deal with (Gill 2012: 207).

Coming to its guiding rules and processes, all petitions are filed at the filing counter and if, after examination, no defect is found they are registered and given a serial number. However, the Registrar has the authority to decline a petition if he/she is of the view that 1) it does not comply with the requirements and rules of the SC, 2) it is a frivolous petition and/or 3) it contains *scandalous* matter. This is done by way of a written order. Next, the SC appoints a date for hearing after all the required documents are submitted and this is notified to the individuals and parties concerned by the Registrar. A maximum of one advocate is heard on behalf of petitioner(s) and respondent(s). This rule is fixed, unless instructed otherwise by the SC (Supreme Court of India 2013: 13-20).

Furthermore, petitions under Article 32 must be heard by a Bench comprised of at least five Judges. However, if a petition does not require considerable question of law and significant interpretation of the Constitution, it may be heard by a Bench of less than five Judges. This decision, as mentioned earlier, is made by the Chief Justice of India. The petition must describe the nature of the violation of fundamental rights, the proposed solution or relief and the grounds on which it is demanded. All facts backing the content of the petition must be attached in the form of an affidavit. Specific to PILs, petitions involving individual matters must not be accepted as PILs (except in specific categories of issues)¹⁸. Along with describing the facts of the case and the nature of injury (likely to be) caused, the petitioner must also file an affidavit affirming that no personal motive or interest prompted the filing of the PIL. Upon preliminary hearing, if the Bench is of the opinion that no fundamental rights are violated they must dismiss the petition (Supreme Court of India 2013: 40-42).

While the judges evaluate and assess arguments based on these constitutional and judicial rules, it is essential to recognize that they only act as a guide and do not determine the evaluation or assessment of every case. The expansiveness of the Indian Constitution gives rise to diverse cultural constructions and interpretations when approached by different individuals and judges¹⁹. As a result, judges may come to dissimilar or even disparate conclusions despite depending on the same sections of the Constitution as the *premise* for their decisions (Baxi 2003: 571-575). Having said that, judges do not have full freedom of *constitutional ethic*²⁰ because these existing rules may prevent them from adopting certain views and values (Feldman 1992: 44). Thus, this above framework of rules helps analyse judgements in the 1) absence of a fixed procedure that the SC adheres to in gauging arguments, cases and petitions and 2) presence of diverse *institutional perspectives*, norms and *policy worldviews* that influence decisions of the SC Judges²¹ (Mate 2015).

As mentioned earlier, there are many issues that, for a variety of reasons, are not prominent on the agenda (elaborated below). Thus, it is vital that we understand the dynamics of their policy

¹⁸ Document of PIL guidelines formulated by the SC of India, available at: <http://www.sci.nic.in/circular/guidelines/pilguidelines.pdf>

¹⁹ Baxi calls these various actors 'multiple authors' of the Constitution as text (2003: 572).

²⁰ Feldman defines constitutional ethic as commonly accepted beliefs and prescriptive principles according to which the Constitution must be interpreted (1992: 44).

²¹ 'Institutional Perspectives' and 'Policy Worldviews' – phrases borrowed from Mate 2015. He argues that the Judges' policy worldviews are "shaped by exposure to arguments and debates surrounding constitutional litigation, broader political and intellectual discourse within the media, and through their interaction with political, legal-professional, and intellectual elites in formal and informal fora and settings" (Mate 2015: 155).

process. For this purpose, we now look into the theory of policy windows and policy entrepreneurs given by John. W. Kingdon. The idea is to discern the situation with respect to policy process of euthanasia in India, which is the focus of this paper.

In his book 'Agendas, Alternatives and Public Policies', Kingdon introduces the 'Policy Streams Approach' and defines three *streams* as: 1) problem stream: that consists of matters of public importance that demand attention, 2) policy stream: that consists of alternatives or solutions for the problems before reaching the decision agenda and 3) political stream: that consists of structural changes and political climate like changes in administration, public opinion, national interest/mood etc. (Guldbrandsson & Fossum 2009: 434-435). When all these three streams come together, a *policy window* opens which has the potential to lead to policy changes. Kingdon defines a policy window as "an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems" (Kingdon 2003: 165). In simpler words, these windows are opportunities for action and it is only through these opportunities that reforms in public policy take place. According to him, this window opens because of two things: 1) a (perceived) urgent problem arises in the problem stream and 2) there is a change in the political stream, like a shift in the public mood etc. These two streams are closely related and they draw from the policy stream for solutions and alternatives (Kingdon 2003: 166-175).

Now, for any issue to reach the decision agenda, these three streams must merge or occur at the same time. For instance, if an issue fails to draw political attention and cannot embed itself in the political stream, its place on the decision agenda declines. There can be several reasons for this. Literature on policy agenda shows that it can be the way an issue is defined, how political systems process and manage information, how it fits with certain ideologies and values or how it affects existing coalitions (Baumgartner et al. 2006, Jones & Baumgartner 2005, Kingdon 2003). It can also be that a problem does not meet the right solution at the right time or an existing solution does not meet the right problem to attach to at the right time or since there is limited state capacity, the (perceived) pressing problems take precedence over less pressing problems (Guldbrandsson & Fossum 2009: 435, Kingdon 2003: 184). In this regard, policy entrepreneurs play a significant role in shaping the three streams and bringing them together. This is called *coupling the streams*²². For example, "if a solution is attached to a prominent problem, the entrepreneur also attempts to enlist political allies, again joining the three streams" (Kingdon 2003: 182). This responsibility involves inventiveness and innovation because they seek to improve the possibility of an idea reaching the decision agenda that has multiple determinants broader than the entrepreneur's domain (Kingdon 2003: 179-180)²³.

Our discussion so far demonstrates that problems do not get on the decision agenda without efforts made by some actors. The amount and kind of efforts required depends on the nature of the issue. It also describes the provisions that guide SC actions and how it functions within these provisions. In order to identify how these processes develop in the context of euthanasia in India then, we trace, analyse and assess how different components of arguments in the SC judgement

²² Phrase given in Chapter 8-The Policy Window, and Joining the Streams, 'Agendas, Alternatives, and Public Policies', (Kingdon 2003)

²³ See the study conducted by Guldbrandsson & Fossum; it shows that this theory is "identifiable with nine child health promoting policies in three Swedish municipalities" (2009: 441). See also the study conducted by Jan Odom-Forren & Ellen J. Hahn, 'Mandatory Reporting of Health Care- Associated Infections: Kingdon's Multiple Streams Approach' (2006: 64-72).

interact with each other and with the other arguments in the text that lead to a system of argumentation²⁴ (Gasper 1996: 39-46). This is important because it points up the way euthanasia is presented as a problem by SC and the means through which this is achieved that resulted in its final solution in the matter. In other words, we undertake a discourse analysis of the judgement to examine the ‘temporary’²⁵ policy solution of euthanasia to deepen our understanding of its policy dynamics. The next sections explain and justify our choice of techniques/methods to carry out this analysis.

Our discussion of field’s complexity²⁶ and constraints to exercising full constitutional ethic indicates that there exists a relationship between generally accepted principles and policy decisions. This is pointed out in chapter 2 and also by Gasper who argues that “techniques may only operate within a frame of assumptions and, on the other hand, general principles only become operational through many technical steps” (1996: 47). This is especially true if the decisions do not strictly lie within the democratic system of competitive politics. Therefore, it is essential that we incorporate into our study the concept of policy frames. Verloo and Lombardo argue that policy frames either originate in ‘discursive consciousness’ where the actors using them are aware of their meaning and the reason they are using them or in ‘practical consciousness’ where they occur in norms and rules and are used unintentionally by the actors. (2007: 32). Attention to these helps one identify: 1) aspects that are accentuated and underplayed and 2) tools of justification and persuasion, especially in relation to other available alternatives and solutions²⁷.

In other words, they help us identify *generic* narratives or stories derived from broader themes in society that inform how a policy issue should be perceived (‘framing devices’) and that inform actions as to what should be done (‘reasoning devices’) (Rein and Schön 1996: 89). This means that every policy action hinges upon larger contexts and these are interpretively represented. In this respect, Gasper talks about colligation²⁸ and story-telling and explains the latter as “purposeful knitting together and application of all the relevant phases and techniques, including resolving disputes between them” (1996: 52).

So, it is clear that an analysis of argumentation in the SC judgement must combine both a study of language-in-use as well as how they link to broader (macro) structures. Isolated analysis may not lead to reliable and credible results. Keeping this in mind, we use a combination of techniques of discourse analysis to study the judgment. We first use Gasper’s Analysis Table to identify argument specification of the judgement (Gasper 2000: 8). The idea is to identify and examine the use of words and their meanings, categorisations, assumptions (stated and unstated), conclusions (stated and unstated) and rebuttals or possible counter-arguments. In other words, we examine the judgement in the form of policy as text²⁹, with special attention to its structure and context. Gasper’s Analysis Table is primarily used for analysing short texts for it requires detailed attention to every line. Despite this, we choose to undertake this painstaking method because:

²⁴ Gasper looks at “policy wording as argumentation” and policy analysis as including “assessment and preparation of arguments in which ideas about values/objectives/priorities are combined with claims about facts and cause-effect linkages in the public arena” (Gasper 2000: 3).

²⁵ Refer to chapter 2.

²⁶ Phrase borrowed from Gasper (1996). See also *supra* note 21.

²⁷ See relevant study conducted by Pain (1996: 63-76) where he talks about the constant use certain attributes of Bhutan in negative overtones that has an impact on its development policy.

²⁸ Gasper, citing Collins Dictionary, defines colligation as “the construction of overall arguments, where one has ‘to connect or link together, tie, join, to relate (isolated facts, observations etc.) by a general hypothesis’” (1996: 52).

²⁹ See Ball where he says a policy text “does not arrive ‘out of the blue’, it has an interpretational and representational history. Neither does it enter a social or institutional vacuum” (1993: 11).

1. It combines approaches given by Toulmin³⁰ and Scriven for argument specification. Toulmin provides an overview of argument structure by identifying six different components. They are: i) conclusions or claims, ii) grounds or data, iii) warrants, iv) backing (for the warrants), v) qualifier and vi) rebuttal or counter-arguments. He argues that the nature of these components vary between policy fields (Gasper 1996: 40, Gasper & George 1997: 2-4). Next, Scriven elaborates on Toulmin's outline and gives seven steps to argument analysis. They are: i) clarification of meanings, ii) identification of conclusions, iii) portrayal of structure, iv) formation of stated and unstated assumptions, v) criticism of the premises and the inferences, vi) introduction of other relevant arguments and vii) overall evaluation of the argument. Scriven's method calls for argument specification (i-iv) *before* argument evaluation (v-vii) to ensure logical and coherent reasoning (Gasper 1996: 37-38, Gasper 2000: 9, Scriven 1976: 39).
2. It presents these findings in a tabular way allowing elaboration and rewording of arguments and movement within and across sections of the table. This helps in linking one argument to the other and assess the structure of each argument to organize information and recognize specificities in a systematic way.

These features of Gasper's Analysis Table allow flexibility essential for assessing policy arguments that are hardly ever straightforward. Inclusion of stated and unstated conclusions, assumptions and possible counter-arguments give way for identifying alternative conclusions which are crucial to stimulate and shape policy debates and discussions (Gasper 1996: 55-56).

After this, we undertake frame analysis as a macro approach to look at the judgment in the form of policy as discourse that may have an effect in terms of altering the way one may understand issues 'otherwise' (Ball 1993: 15). This means that we explore the possibility of the SC's decisions being influenced by any existing frames that reflect the broader themes in society (Rein & Schön 1996: 89). The idea is to allow our text analysis to inform the frame analysis to further strengthen the former. This gives credibility to our research.

Frames guide the problem definition and problem setting stage where there isn't sufficient information to deal with an issue (Gasper & Roldan 2011: 13). Throughout the judgement, the SC emphasises on its lack of knowledge to deal with a perplexing issue like euthanasia. Its dependence on specific cases and principles opens up possibilities of reliance on existing frames as a guiding tool. Through frame analysis then, we intend to trace these frames of reference³¹ and the linkages and patterns that have led to the final outcome (Gasper et al. 2013: 30). To trace these frames of reference, it is essential to pay attention to the context in which these frames exist and the purpose that they serve. In this respect, Rein and Schön (1996: 90-92) present two types of frames:

1. *Rhetorical frames*: These frames are in the domain of policy debates and discussions that play a key role in shaping policy discourses. These frames occur in the language-in-use of policy texts with an intention to persuade, justify and legitimize.
2. *Action frames*: These are in the domain of policy action and they occur in observable patterns of behaviour and action in the policy arena. These frames are relatively broad and vague and are often mixtures of two or more kinds of frames.

This exercise is an important step in our analysis because a recognition of these frames leads to identification of social contexts, perceptions and assumptions associated with them. This gives

³⁰ Toulmin first contributed to argument structure in 'The Uses of Argument' in 1958. His model of argumentation was used widely in policy analysis. A prominent adaptation of this model was undertaken by William Dunn, first in 1981, in 'Public Policy Analysis: An Introduction' (Gasper 2000).

³¹ See <http://www.doceo.co.uk/tools/frame.htm>

an opportunity for reflective policy analysis (Rein and Schön 1996: 92). Moreover, we also incorporate metaphor analysis, word-frequency and word-choice analysis (lexical analysis). They help us 1) trace the use of language and frames through the authors' system of thinking³² and 2) give a quantitative dimension to the analysis. This adds weight to our findings and enriches them.

Lastly, it is important to acknowledge possible ethical issues that may compromise the quality of our results. Carrying out an analysis like ours demands that one is aware of personal subjectivities and biases. While we believe that these are not completely avoidable and perhaps even acceptable to a certain extent, it is essential that they are controlled to avoid imprecise analysis. In our attempt to do this and to strike a balance between over-interpretation and over-simplification, we have employed these different techniques in combination with each other. Of course, identifying frames and understanding why they exist in the form that they do and what are its implication also entails interpretation. However, our awareness of this indicates that attention has been paid to it to our greatest extent.

³² Borrowed from George Lakoff lecture in 2008, *available at*: https://www.youtube.com/watch?v=S_CWBiyIERY

4. Text Analysis

The SC judgement consists of 26,908 words. The entire judgement is organized into 147 paragraphs. Although it does not contain a list of contents, the full text can be divided into five distinct components with sub-parts in 2, 3 and 4. This is presented in a tabular form in Table B1. The judgement is an exhaustive description of different viewpoints of different actors (see Table A2) and varied definitions, meanings and processes involved. Our text analysis of the judgement is presented in a comprehensive tabular form in Table B2 along with a web-page link to the full text of the judgement as a footnote. The page numbers used in this paper are consistent with those in that copy of text.

The analysis table contains carefully selected parts arrived at after reading the text multiple times. The basis of selection is as follows: 1) Include those sections that support and underpin the key conclusion, that is the final SC judgement and 2) Avoid those sections that contain lengthy repetitions of previous arguments or those that contain strict technical information, such as section III of the doctors' report that contains dense medical terminology³³. However, it should be noted that this neither indicates that the implication of these arguments is not understood nor that these are not taken into consideration. It won't be an exaggeration to say that the selected sections have been thoroughly studied and constantly added and improved upon throughout the process.

Next, the text in blue shows assertive statements and submissions made in this judgement. The text in red shows terms/phrases used in unclear and broad ways that can be interpreted differently by different persons. And lastly, the text in green shows the use of metaphors in certain parts of the text. A metaphor analysis of these using Steger's three-step method is presented in a tabular form in Table B3. Next, special consideration is given to: 1) praise and criticism language (Gasper 2000: 10), 2) naturalization terms that explain some concepts and events as normal (Gasper et al. 2013: 30), and 3) possible counter-arguments or rebuttals³⁴.

The judgement begins with describing euthanasia as one of the most perplexing issues. According to the SC, this is true of euthanasia all over the world and India is no exception to this. This universally perplexing and confusing nature of euthanasia is used as a warrant³⁵ that supports the decision of the SC to rely heavily on foreign cases and their understanding of things. Such a categorization and explanation at the outset is unusual of court judgements in India that normally begin with stating the content and facts of the petition as they are. However, it is essential to note that the SC uses the same argument³⁶ in its decision to pursue the case further. The petition reads "there is not the slightest possibility of any improvement in her condition and her body lies on the bed in the KEM Hospital, Mumbai like a dead animal, and this has been the position for the last 36 years. The prayer of the petitioner is that the respondents be directed to stop feeding Aruna, and let her die peacefully" (Aruna Shanbaug v. Union of India and others 2011: 4). The SC observes that since Article 21 does not include the right to die (as per the verdict in Gian Kaur case³⁷), the petition is incomplete and should ideally be dismissed³⁸.

³³ See Aruna Shanbaug v. Union of India and others (2011: 9-14).

³⁴ This is one of the six elements in Toulmin's model of argumentation. A rebuttal "describes why belief in the Conclusion needs to be modulated. It may consist of doubts or counter-arguments concerning any of the elements of the argument or directly concerning the Conclusion" (Gasper & George 1997: 4).

³⁵ The warrant: One of the six elements of Toulmin's model of argumentation, as explained by Gasper (2000: 5).

³⁶ Refer to paragraph 2 and 4 of Table B2.

³⁷ *Infra* note 91.

³⁸ See stated conclusion of paragraph 4 and column 3 in paragraph 19 in Table B2.

We identify three (dispersed) parts in the judgement text that steer towards the final conclusion (indicated in Chapter 2). They are:

1. The SC establishes that the hospital staff's relationship with Aruna is a *real* familial bond that cannot be questioned or compared. Therefore, it is the KEM hospital that is Aruna's next friend and not Pinky Virani³⁹. Further, it points out inaccuracies of the petition: i) it fails to demonstrate any violation of fundamental rights necessary for petitions under Article 32 and ii) as opposed to Virani's claim⁴⁰, it declares Aruna to be in a PVS and not dead based (primarily) on the US contributions to the meaning of death and PVS (Aruna Shanbaug v. Union of India and others 2011: 88-96).
2. The SC draws a distinction between i) active and passive euthanasia and ii) voluntary and involuntary euthanasia using analogies and hypothetical situations⁴¹. For instance, the SC while explaining the active-passive binary argues "...if one sees a burning building and people screaming for help, and he stands on the sidelines – whether out of fear for his own safety, or the belief that an inexperienced and ill-equipped person like himself would only get in the way of the professional fire-fighters, or whatever – if one does nothing, few would judge him for his inaction. One would surely not be prosecuted for homicide..." (Aruna Shanbaug v. Union of India and others 2011: 43-44). It elaborates very little on the voluntary-involuntary binary⁴².
3. Further, it makes detailed enquiries as to who has the authority to give consent to withdraw medical treatment and under what conditions does it not amount to crime. This examination is in the case of incompetent patients (involuntary passive euthanasia) and it considers the UK Airedale case in detail as well as some cases in the US and Gian Kaur in India⁴³. The SC, in this respect, clarifies in paragraph 95 that "...foreign decisions have only persuasive value in our country, and are not binding authorities on our Courts" (Aruna Shanbaug v. Union of India and others 2011: 84).

Furthermore, while the overall judgement is divided into five main components, it does not follow a strict structure within and across these components. The authors of the text – Justice Katju and Justice Misra – at various instances move from quoting or rephrasing other's views and experiences to pronouncements of the SC. This is evident, for instance, from paragraph 22 to 35 of the judgement. It begins with the views of the AC in paragraph 22. It then moves to the SC articulating an admissible question and its solution in paragraph 27. These are drawn directly from the submissions of the AC presented in a discontinuous way in the earlier paragraphs. Paragraph 31 to 35 again return to the views of the former⁴⁴ (Aruna Shanbaug v. Union of India and others 2011: 34-40).

Here, it is important to note that the AC does not represent any party of the case. They are appointed by the SC and their function is to present the SC with relevant facts and knowledge to make a well-informed decision. Our study of the text shows that 14 of its paragraphs contain views of the AC. Compared to this, only 6 paragraphs contain views of the counsel representing the

³⁹ Refer to column 3 of paragraph 14, 126(i-a), 126(ii) and 143 in Table B2 along with paragraph 12, 13 and 147 of the SC judgement. The main conclusion and stated conclusion in para 14 and 126(i-a) respectively are the same that Pinky Virani is not her next friend, KEM hospital is.

⁴⁰ See column 2 & 3 of para 105 and 121 and unstated assumption of para 125 of Table B2.

⁴¹ Refer to column 2 & 3 of para 28, 38, 39, 41, 44, 45a, 45b, 49, and the main conclusion of 50 in Table B2. See also para 40, 42, 43, 46 and 47 of the judgement.

⁴² See column 2 & 3 of para 53 in Table B2 along with para 52 of the judgement.

⁴³ Refer to Table B2: see column 2 & 3 of para 26, 29, 31, and 60. See stated conclusion in 66 and unstated conclusion in 102. See stated assumption of 75 and unstated assumption of 76. See also para 27, 55, 58, 62, 88 and 101 of the judgement.

⁴⁴ Refer to Table B2: See para 27, 28, 30 and 31.

petitioner and 1 paragraph contains views of the counsel representing the Union of India. Out of the 6 paragraphs of the former counsel, 2 are statements made by the SC itself. In addition to this, the SC also employs praise language for the detailed and categorical submissions made by the AC concerning relevant laws and practices in place. A part of these submissions, which is elaborated in paragraph 31⁴⁵, denies the SC any role in deciding what is in the best interest of incompetent patients (note the use of the critical language-in-use). He implies that the SC must only announce that any such decision made by doctors/physicians is in accordance with the law.

Consequently, the law formulated by the SC mandates a medical report made by the doctors' committee articulating their opinion on what is in the best interest of the patient concerned. However, it is only after the HC's approval that any such procedure can be lawfully carried out. This approval also includes views of the patient's family or next friend.

These observations demonstrate two important aspects:

1. The SC's effort to overcome its institutional incompetence in fact-finding and information gathering. It can be said that this solution is based on the expertise of the SC – expertise that it can demand from relevant experts with profound knowledge in different fields.
2. The SC's conscious decision to actively include the judiciary in its final decision as *parens patriae* (translates to 'parent of the nation'). As a safeguard against possible misuse, this not only justifies judicial intervention but also strengthens the idea that Courts always have the public's best interest in mind, especially when they are the public's only access to the political system. This is prominent in the argument made in paragraph 127b whose main (unstated) conclusion is that any decision taken by the HC will always be in the best interest of the public⁴⁶ (*Aruna Shanbaug v. Union of India and others* 2011: 101-102).

Next, the SC assumes different tones while examining different issues throughout the process. For instance, paragraph 50 opens with the SC asserting that the current case is concerned only with passive euthanasia. However, it observes that "it would be of some interest to note the legislations in certain countries permitting active euthanasia" (*Aruna Shanbaug v. Union of India and others* 2011: 45). This argument indicates a tone of not just assertion but also of tacit indifference⁴⁷ towards active euthanasia. Next, it is notable how it merges two dissimilar tones of protection and authority to reinforce each other. This is evident throughout the text but is accentuated in the second half. Paragraphs 132 (quoted above) and 127 reveal not only an authoritative tone in an obvious way, but also a protective one. The use of naturalisation wording in "...the doctrine of *parens patriae* which is a well-known principle of law." is also significant (*Aruna Shanbaug v. Union of India and others* 2011: 102). This feature of the judgement stems not only from the SC's *accepted* role as *parens patriae* with regard to peripheral and lone groups of society⁴⁸ but also further enhances it.

For example, in marking out KEM hospital as Aruna's next friend it draws a clear comparison between Virani and KEM hospital's nursing staff. It consciously uses the metaphor 'day and night' as praise language to underline the latter's bonding with her, making them her real family (*Aruna Shanbaug v. Union of India and others* 2011: 99-100). The metaphor here serves the purpose of emphasis and persuasion (opposite words like 'day' and 'night' add weight to the argument)⁴⁹. This achieves two things:

1. The SC defines familial relationships for all.

⁴⁵ *Supra* note 44.

⁴⁶ See column 3 of paragraph 127b in Table B2.

⁴⁷ See column 2 of paragraph 50 in Table B2.

⁴⁸ See column 2 of paragraph 132 and 127b in Table B2. See discussion on PILs in Chapters 2 & 3.

⁴⁹ Refer to row 2 in Table B3 (II). Also note criticism language directed towards Pinky Virani in column 2 of paragraph 126(i) in Table B2.

2. It puts the judiciary in that same category of familial relationships with respect to incompetent and marginalised people.

Finally, some other identified tones in the text are those of non-seriousness/ridicule and concern/advice indicated in Table B2 in paragraphs 49 and 100 respectively. All these tones are complementary and inter-connected.

Next, the SC has on many occasions extended its role of judicial review in a rather restrained and a low key manner, especially in cases/issues where political mobilisation is either time-taking or absent for a variety of reasons. In this case the SC, on one hand, indicates towards the *fact* that euthanasia is a public policy issue that needs to be addressed by the Parliament. On the other hand, it raises urgent questions and lays down elaborate guidelines as a temporary solution to it. Similarly, on the subject of Section 309 IPC it says that voluntarily refusing medical treatment in a conscious state of mind is not a criminal offence. But it questions whether voluntarily refusing food that may lead to death in a conscious state of mind amounts to crime. It adds that this particular question does not need resolution in this case⁵⁰ (Aruna Shanbaug v. Union of India and others 2011: 57-58). However, it comes back to the same subject in paragraph 100 and advises the government to discard such an age-old law. It does so notwithstanding its earlier position to not go into its components and their validity⁵¹ (Aruna Shanbaug v. Union of India and others 2011: 85-86).

Paragraph 100 on Section 309 reads “...the time has come when it should be deleted by Parliament as it has become anachronistic. A person attempts suicide in a depression, and hence he needs help, rather than punishment. We therefore recommend to Parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code” (Aruna Shanbaug v. Union of India and others 2011: 86). Attention to language shows that the SC makes this argument in the ‘gnomic present’. This can be seen as the SC’s way of displaying its claim to the General Truth (McCloskey 1994: 326). Drawing from this observation then, it would not be erroneous to suggest that there is a possibility that this can be fit into an observable pattern where the SC attempts to bring certain issues into the governmental agenda⁵² to stimulate discussions and shape policy debates. These are issues that do not attract enough political attention, thereby constraining them from reaching the decision agenda.

Lastly, we pin down three inconsistencies, contradictions and tensions in the system of argumentation. This is important because it creates a space to examine and review the debating aspects⁵³ of policy that can stimulate further research. In this case, the inconsistencies are found in:

1. *The Ground for Conclusion:* Paragraphs 23 and 24 deal with the opinions of the AC. In the former, the SC presents his argument where according to general law it is a patient’s right to not consent to treatment provided that he/she is in a sound state of mind. The following paragraph argues that passive euthanasia should be allowed in certain cases where the decision to withdraw treatment is taken by responsible doctors and physicians (Aruna Shanbaug v. Union of India and others 2011: 35-36). The inconsistency here is evident: if as per general law, it is the patients’ right to not consent to treatment, why should a decision regarding passive euthanasia be taken by responsible doctors?⁵⁴ In a later paragraph (126), the SC’s decision to permit passive euthanasia is directly derived from the AC’s viewpoint (stated explicitly), resulting in an insufficiently grounded and weak decision⁵⁵ (Aruna Shanbaug v. Union of India and others 2011: 98-99).

⁵⁰ See unstated conclusion of paragraph 52b in Table B2.

⁵¹ See column 2 & 3 of paragraph 100 in Table B2.

⁵² Phrase borrowed from Kingdon, 2003.

⁵³ Phrase borrowed from Gasper (2003: 55).

⁵⁴ See column 2 of paragraph 23 and 24 in Table B2. See possible rebuttal of paragraph 24 in particular.

⁵⁵ Refer to column 2 & 3 of paragraph 126 in Table B2.

2. *Justification for Laying Down the Law*: The SC refers to the Vishakha case (mentioned earlier) in allowing passive euthanasia in India. It says "...following the technique used in Vishakha's case (supra), we are laying down the law in this connection which will continue to be the law until Parliament makes a law on the subject" (Aruna Shanbaug v. Union of India and others 2011: 99). Now, the Vishakha case was a PIL matter that prayed for implementation of fundamental rights of women at work places. However, this case is not a PIL matter but a writ petition under article 32. It deals with a personal issue⁵⁶ praying for withdrawal of Aruna's life system. This indicates blurring of lines between these two different types of judicial provisions that serve different objectives and purposes.
3. *Justification for Rejecting the Petition*: After rejecting Aruna's petition on grounds that Virani is not her next friend, the SC did not specify the procedure that Courts must follow if a patient's family/next friend is a recognized medical practitioner, as in this case. The report submitted by the panel of doctor does not state what is in the best interest of the patient⁵⁷. It simply says "if the doctors treating Aruna Shanbaug and the Dean of the KEM Hospital, together acting in the best interest of the patient, feel that withholding or withdrawing life-sustaining treatments is the appropriate course of action, they should be allowed to do so, and their actions should not be considered unlawful" (Aruna Shanbaug v. Union of India and others 2011: 25). This means that the SC rejected the petition based on just the opinion of patient's next friend.

This systematic argumentation analysis using Gasper's Analysis Table thus brings out features of the judgement that have implications on its final decision. Through this analysis, we link the language-in-use and the tones employed for persuasion, the SC's reliance on propositions from select individuals and accepted rules from select countries and experiences of the world and finally its own insights and decisions to understand the way the SC has arrived at the solution.

⁵⁶ See column 3 of paragraph 126 in Table B2.

⁵⁷ See column 3 (in particular its possible counter-argument) of paragraph 126 (i-a) in Table B2. See also possible counter-argument of paragraph 29.

5. Frame Analysis

Building on our extensive micro-text analysis, we use the macro approach of frame analysis as our next tool of discourse analysis. Frames are useful to “render events and occurrences meaningful and thereby function to organise experience and guide action” (Benford & Snow 2000: 614) So, we identify three dominant, recurring frames in the entire judgement that we believe have played an instrumental role in giving shape to the final decision. The frames identified in this chapter are not hierarchical. This means that these frames cannot be categorised into a master or primary frame⁵⁸ that is supported by secondary or lower-level frames. All three frames are strongly linked to the arguments that have led to the final judgement. However, this does not imply that they are unrelated and independent of each other. They are linked to each other, and they may also be interpreted to mean different things in different contexts. In other words, they are all relational, flexible and inclusive (Snow & Benford 2000: 618).

Frame 1: India is a highly corrupt country.

While the judgement completely disregards active euthanasia, it enquires into who can decide whether life support should be continued or terminated when a patient is in a state of coma or PVS. Paragraph 102 reads “this is an extremely important question in India because of the unfortunate low level of ethical standards to which our society has descended, its raw and widespread commercialization, and the rampant corruption, and hence, the Court has to be very cautious that unscrupulous persons who wish to inherit the property of someone may not get him eliminated by some crooked method” (Aruna Shanbaug v. Union of India and others 2011: 86-87).

Further in the judgement in paragraph 127, it comes back to this issue where it argues that it cannot leave the decision entirely up to the patients’ family or doctors because “...there is always a risk in our country that this may be misused by some unscrupulous persons who wish to inherit or otherwise grab the property of the patient. Considering the low ethical levels prevailing in our society today and the rampant commercialization and corruption, we cannot rule out the possibility that unscrupulous persons with the help of some unscrupulous doctors may fabricate material to show that it is a terminal case with no chance of recovery” (Aruna Shanbaug v. Union of India and others 2011: 101-102). It goes on to add that “the commercialization of our society has crossed all limits. Hence we have to guard against the potential of misuse” (Aruna Shanbaug v. Union of India and others 2011: 102).

The underlined words and phrases are unfavourable terms that signify severe criticism⁵⁹. While the words ‘corruption’ and ‘commercialization’ only occur twice and thrice respectively in relevant paragraphs, these criticism words put force on these processes, allowing the SC to employ the rhetoric frame without furnishing any facts. It is derived from a generalised societal theme that can be interpreted to mean different things. Here, corruption is used in a very narrow way to refer to the greedy motives of doctors and relatives.

Furthermore, in the guidelines set up in the judgement, the SC uses the term ‘State’ to refer to state governments and state legislature (as per Article 12 of the Constitution). It mentions the State only twice in paragraph 138 and 140. The former paragraph reads “for this purpose a panel of doctors in every city may be prepared by the High Court in consultation with the State Government/Union Territory...” (Aruna Shanbaug v. Union of India and others 2011: 107) and the latter reads “...the High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient...” (Aruna Shanbaug v. Union of India and

⁵⁸ Benford & Snow, in the context of social movements, explain that “the more inclusive and flexible collective action frames are, the more likely they are to function as or evolve into ‘master frames’” (2000: 618).

⁵⁹ Refer to column 2 of paragraph 102 in Table B2.

others 2011: 107). These directions indicate a slight hint/tone of restraint in involving the ‘State’ in this matter. Though it is recognized as a vital actor, the SC does not grant a very active role to it in the decision making process. This solution seems to serve two purposes: 1) it accentuates the law-abiding and honest makeup of the judiciary without directly accusing the State of being corrupt even once and 2) it provides a solution to the legislative bodies that requires the least amount of resource investment from them. This can improve the chances of this judgement translating into a law passed by the Parliament.

Frame 2: Courts as the guardian of all, especially the vulnerable and unprotected groups of our society [parens patriae].

The SC assumes that incompetent patients need protection and this need is underlined by the choice of strong criticism words identified in the previous section. The phrase ‘best interest’ (of patients) and ‘parens patriae’ occur 38 plus 4⁶⁰ and 16 times respectively.

After equating the inclusion of HCs with safeguarding interests of citizens in need in paragraph 127 (quoted above), the SC explains in detail the doctrine of parens patriae in different countries from paragraphs 128-131 before granting the authority of approval to HCs in paragraph 132 (Aruna Shanbaug v. Union of India and others 2011: 102- 104). It states “...in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as parens patriae, which ultimately must take this decision...” (Aruna Shanbaug v. Union of India and others 2011: 104). This shows that this frame acts as a normative praise theme⁶¹ which is a combination of both rhetorical and action frame⁶². In other words, it not only “makes the normative leap from is to ought” (Rein & Schön 1996: 91), but also shapes and guides policy action.

It is remarkable how the entire judgement is a dictation and the SC effectively employs this universally accepted principle to not just bolster its authority, but also to make all its decisions embedded in this theme that is resistant to criticism. This aspect brings us back to the tones identified in the previous chapter. All these tones follow (directly or indirectly) from this normative role of the SC as a guardian. For instance, paragraph 4 starts off with an emphatic tone where the SC claims that it “could have dismissed this petition on the short ground that under Article 32 of the Constitution of India (unlike Article 226) the petitioner has to prove violation of a fundamental right...” (Aruna Shanbaug v. Union of India and others 2011: 4). But, considering the importance of the issue they decide to “go deeper into the merits of the case.” (Aruna Shanbaug v. Union of India and others 2011: 4) This continues in paragraphs 23, 27, 38, 44, 45, 49, 76, 121 etc., where it is assertive in a direct, straightforward way. However, it can be seen from paragraph 28 that this tone of assertion is also subtle in some parts of the judgement⁶³.

In fact, this tone of assertion and authority is implied in the opening lines itself when the SC compares itself to a “...ship in an uncharted sea, seeking some guidance by the light thrown by the legislations and judicial pronouncements of foreign countries, as well as the submissions of learned counsels” (Aruna Shanbaug v. Union of India and others 2011: 2). Attention to the context in which the metaphors ‘ship in an uncharted sea’ and ‘light’ are used shows that they can be associated with not just unfamiliarity or inexperience but also responsibility. Since attention to context must involve attention to the background of individuals using the metaphors (Steger 2007: 8), our analysis shows that the Judges use them consciously as well as unconsciously to devise a solution to the issue. They use the former consciously to refer to their current job/responsibility

⁶⁰ A study of the judgement shows that the word ‘interest’ is used in the same meaning as ‘best interests’ of patients four times.

⁶¹ Phrase borrowed from Gasper 2000.

⁶² See column 2 & 3 of paragraph 127b and 132 in Table B2.

⁶³ This tacit tone is demonstrated in column 3 of paragraph 28 in Table B2.

as captains of that ship to make a decision till the parliament acts on it. They use the latter unconsciously that reflects their thoughts and views on our society's corrupt practices. They both justify relying on 'the light thrown by' foreign cases and it is this justification that provides the third frame (explained below). Additionally, both judges have dealt with sensitive issues like honour killings, rights of sex workers etc. individually as well as together⁶⁴. This lends credibility to their position as decision-makers in this case⁶⁵.

At this point, it can be noted that as per the principle, it is the State – as defined in Article 12 - that must act as *parens patriae*. However, the SC refers to the case of *State of Kerala vs. N.M. Thomas*, 1976 where Justice Mathew observed that the Court also constitutes the State (as cited in *Aruna Shanbaug v. Union of India and others* 2011: 104). To strengthen this idea further, it relies on the *Airedale* case⁶⁶ according to which the Courts have *parens patriae* jurisdiction as representatives of the sovereign (*Aruna Shanbaug v. Union of India and others* 2011: 76). Hence, we can see that there is an inconsistency in the way the SC defines that 'State' here and in the later parts where it states its guidelines⁶⁷. This inconsistency is deliberate and unaddressed to serve the purpose of the situation. The SC therefore uses these two frames (identified so far) convincingly to characterize the judiciary (which is independent and apolitical) as the protector of its public.

Frame 3: Passive euthanasia is more favourably accepted than active euthanasia.

The SC defines active and passive euthanasia while discussing legal issues involved in the case in section 2 (see Table B1). The SC, after introducing the two types, swiftly moves to elaborate on the illegality of the former. Paragraph 39 reads "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" (*Aruna Shanbaug v. Union of India and others* 2011: 41-42). While discussing active euthanasia separately⁶⁸, it remarks in its opening paragraph (41), "As already stated above active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide)" (*Aruna Shanbaug v. Union of India and others* 2011: 42). Furthermore, in paragraph 45 of the judgement it states that "an important idea behind this distinction is that in "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him" (*Aruna Shanbaug v. Union of India and others* 2011: 43).

As is evident, the SC employs criticism words like 'lethal', 'forces', 'kill', 'illegal', 'end', 'done' and 'crime' to describe active euthanasia. On the other hand, it uses naturalization terms like 'normally', 'usually', 'generally' and 'simply' and favourable terms like 'preserve', 'not save' and 'not done' to describe passive euthanasia⁶⁹. It is also worth noting that the term 'passive euthanasia' occurs 20 times in the text. Of this, it has been used only 3 times with reference to the Indian context – all three at instances where the SC is describing the AC's submissions. Paragraphs 126-147 of the text establish the law on passive euthanasia. Here, it uses variations of a more favourable term

⁶⁴ Refer to row 3 of Table B3 (I).

See also no. 55, for instance, on this link that lists all cases that Justice Katju was a part of in 2011:

<http://judis.nic.in/supremecourt/Chrsseq.aspx> The Bench consisted of Justice Misra and Justice Katju who dealt with honour killings and they imposed death sentence (which is constitutionally permitted) to the appellant. All SC cases where they worked together are available on the search portal:

<http://judis.nic.in/supremecourt/chejudis.asp>.

⁶⁵ Refer to row 2 & in particular row 3 in particular in Table B3 (II).

⁶⁶ See *Aruna Shanbaug v. Union of India and others* 2011: 59-76.

⁶⁷ See Chapter 4.

⁶⁸ See section 2.1 in Table B1.

⁶⁹ The words 'lethal', 'kill', 'illegal' and 'crime' are used 16, 13, 9 and 12 times respectively. See also column 2 of paragraphs 38, 39, 44, 45a and 45b in Table B2.

‘withdraw’ (life support) instead of ‘passive euthanasia’⁷⁰. This selective language-in-use is perhaps derived from the rhetorical frame it employs (deliberately or otherwise) that specifies ‘euthanasia’ in negative overtones. In this context, our text analysis brings to the fore two interesting aspects:

1. In paragraph 21, the SC implies a clear distinction between active euthanasia and physician assisted suicide. However, it goes on to present the difference between euthanasia and physician assisted death in terms of who administers the medication in paragraph 40 (*Aruna Shanbaug v. Union of India and others* 2011: 43). There is a clear inconsistency in both arguments.

2. While it repeatedly draws attention to the fact that euthanasia is illegal everywhere⁷¹, the SC itself neither explicitly declares active euthanasia to be illegal in India nor does it probe into legal aspects or elements in the stated countries where it is legal. It simply presents it as an existing, unchallenged statute in paragraph 41 quoted above. Moreover, its argument that active euthanasia is illegal except with legislation is factually inaccurate⁷².

Such ambivalence and inconsistency in terms of how it is used may be indicative of SC’s reluctance to take definitive decisions in this regard. It should be kept in mind that the SC, as discussed in chapter 2, has often been criticised of going beyond its normative boundaries and limits in dealing with issues that involve a substantial question of policy. In this particular case, it is in response to the individual petition for Aruna that the SC draws up guidelines for carrying out passive euthanasia in India. Probing into euthanasia and physician assisted suicides does not (directly) lie within this case’s purview. It not only requires the SC to considerably extend the scope of the case (which may lead to judicial overreach) but it also demands highly refined mechanisms of information gathering. In order to avoid this then, the SC (perhaps deliberately) hinges upon an existing frame that defines active euthanasia as a positive, calculated act of killing another person. It is crucial to note at this point that a frame, when it guides policy actions or solutions in this manner, is no longer an ‘ideal-type’ rhetorical frame but a ‘mixed, hybrid-type’ action frame (Rein & Schön 1996: 92). Benford and Snow call this ‘prognostic framing’ where issues are identified and articulated in such a way that they restrict the scope or range of solutions (2000: 616).

Lastly, to complete our frame analysis, we locate the silences of the text. These are ideas that are excluded or have received less attention (Gasper & Roldan 2011: 17). These can be implicit or a result of “...invoking precedents, authority, ‘likeness’, ‘obviousness’ and so on” (Gasper 1996: 52). This is important because it has the potential to create a “space for challenge” (Bacchi 2000: 55). What this means is that it is favourable not only because it is informative and it opens up more opportunity for research on euthanasia but also comes closer to seeing policy as a combination of both text and discourse i.e. as processes as well as outcomes (Bacchi 2000: 55, Ball 1993: 10-15).

The silences that we identify are:

1. *Excluded Foreign Cases*: It is not hard to miss that this judgement relies heavily on decisions made by the UK House of Lords and the US Courts. However, it has successfully excluded cases from other countries that could have proven to be insightful. For instance, expounding the debate on the right to die in South Africa would have been relevant for it is a developing country with a democratic structure comparable to India’s. Not only this, its levels of corruption and commercialization (a matter discussed a great deal in the judgement) are also perceived to be on the rise. This second point is important because the SC borrows its decision to oblige approval from the HC directly from the Airedale case. It

⁷⁰ Except once in paragraph 126 which reads, “We agree with Mr. Andhyarujina that passive euthanasia should be permitted in our country in certain situations, and we disagree with the learned Attorney General that it should never be permitted” (*Aruna Shanbaug v. Union of India and others* 2011: 98-99). See also section 4.1 in Table B1.

⁷¹ Refer to column 3 in paragraph 41, 45a and 45b in Table B2.

⁷² Refer to column 2 & 3 of paragraph 39 in Table B2. See in particular possible rebuttal in paragraph 39.

argues that “this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient” (Aruna Shanbaug v. Union of India and others 2011: 101), thereby implying that this may not be the case in the UK (and other foreign cases)⁷³. In such a situation, the widely-discussed experience of South Africa would have been (more) insightful in dealing with the issue of passive euthanasia⁷⁴.

2. *Responsibilities of State High Courts*: The SC sees the solution to our society’s plummeting ethical standards and uncontrollable levels of corruption in the HCs. However, it is surprisingly naïve of the SC to disregard possibilities of our society’s widespread commercialization affecting the performance of HC judges⁷⁵. While one does not expect an instant remedy to this problem, it is worthwhile nonetheless to acknowledge the possibility of such a thing in light of our society’s (alleged) high levels of dishonesty and corruption⁷⁶. Furthermore, keeping a check on the patients’ doctors and family members to avoid misuse requires sophisticated mechanisms of information gathering. While these mechanisms are sufficiently advanced in the UK (role of HCs in this case is borrowed from the Airedale case), that is not the case in India. This aspect is completely overlooked in the judgement⁷⁷.
3. *Attention to Palliative Care*: Our engagement with the literature in chapter 2 shows that a disregard for palliative care leads to a slippery slope⁷⁸ and this is a prominent reason why legalisation of euthanasia is resisted in many (developing) countries. In this judgement, the SC has failed to comment on the state of palliative and hospice care in India which is neither easily accessible nor affordable to the general public. This is important because it i) accepts that not giving consent to treatment is not unlawful, ii) allows passive euthanasia which may be used inappropriately in the absence of adequate palliative care and iii) has emphatically disregarded active euthanasia that is usually requested to relieve unbearable suffering. This lack of consideration for such a crucial related issue (there may be more than this one issue) reflects its failure to accumulate relevant vital information required to make a well-informed decision (linked to our previous argument).

From our results from this systematic and consistent analysis using different techniques combined with application of theories and literature discussed in this paper, we show how they come together to form a system of arguments that leads us to SC’s three-fold conclusion. We present this in a concise tabular form below.

1. It dismissed Aruna’s petition	2. It permitted passive euthanasia in India in certain cases, until the Parliament makes a law on the issue	3. It makes approval from High Courts mandatory
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⁷³ Refer to column 2 of paragraph 126(ii) in Table B2.

⁷⁴ Clarke NO v Hurst and Others (1992) was the first case of euthanasia in South Africa in which passive euthanasia was permitted. To stimulate the process of understanding, a brief description of the case can be found at: <http://www.nortonrosefulbright.com/knowledge/publications/44188/euthanasia-and-patients-right-to-refuse-treatment>

See also for recent discussions on the debate in South Africa.

<http://ohrh.law.ox.ac.uk/euthanasia-case-in-south-africa-does-the-right-to-life-include-the-right-to-die-with-dignity/> See also counter argument-argument of paragraph 142 in Table B2 that comments on the decision of the SC to borrow the definition of ‘best interests’ of patients from the Airedale case.

⁷⁵ This issue has been discussed in public and academic circles. See for example, <http://www.thehindu.com/2002/02/22/stories/2002022200031000.htm>

⁷⁶ See possible counter-argument of paragraph 126(ii) in Table B2.

⁷⁷ See possible counter-argument of paragraph 31 and 127b in Table B2.

⁷⁸ *Supra* note 14.

<p>Convincing use of praise and criticism language.</p> <p>Combined use of authoritative and protective tones to establish the suitability of KEM hospital and the unsuitability of Virani as next friend.</p>	<p>Use of metaphor to justify relying on foreign cases to define active and passive euthanasia.</p> <p>Combines tones of assertion, indifference, and ridicule and criticism language to present active euthanasia.</p> <p>Use of favourable, naturalization words to present passive euthanasia.</p> <p>These lead to frame 3.</p> <p>Lays down the law using its authority as an institution.</p>	<p>Relies on a widely accepted societal theme through frame 1.</p> <p>Use of strong criticism words and a protective tone against corruption (used rather narrowly) in society.</p> <p>Repeated use of the phrase 'parens patriae'.</p> <p>Combined use of accepted principles, naturalisation terms, metaphors and authoritative tone.</p> <p>These lead to and validate the normative praise theme of frame 2.</p>
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6. Conclusion

The discussions in this paper have enabled us to get an understanding of the policy journey of euthanasia in India. It sheds some light on the role of the SC in this journey. Most academic literature and debates play up the policy making role of the SC that is enabled by provision of judicial review, petitions under Article 32 and PILs in India. The principal idea that this understanding carries is that decisions made by the SC through these mechanisms are final. They are seen as solutions to problems that could not get access to legislative bodies. When dealing with such non-political problems, it is obvious that the SC must act differently for there are no constitutional rules & provisions, laws or statutes guiding it. And even if there are, these issues reach the SC for their complete reversal or radical modification⁷⁹. This means that even if the SC puts a law in place, it is not a permanent solution because it needs the government to implement it in order to ensure that the intent of the law is maintained.

Our analysis of the SC judgement highlights two of its aspects rather glaringly. First, the authoritative stance that the SC employs throughout the judgement. It not only decides to take the issue up in spite of the shortcomings in the petition, it also rejects Virani – who filed the petition on Aruna's behalf – as her next friend (this is in accordance with the SC rules), eventually resulting in the dismissal of the petition. It continues this stance till the end where it legalises passive (and not active) euthanasia till a legislation is put in place. It appoints the State High Courts as the authority that can approve any such requests in the future. Counting on the judiciary to take final decisions on such a matter underscores the protective role it assumes as *parens patriae*. This is the second highlighted aspect of the judgement that reinforces SC's decisions from its position of authority. This is because they are perceived to be in the best interest of its vulnerable and marginalised citizens.

The final verdict in this case is seen as a watershed in the timeline of euthanasia in India. While this cannot be contested, a deeper analysis of the decision allows us to point out some of its questionable features. One such detail is found in the fact that the SC has treated this case as a PIL matter throughout, albeit without ordering a *suo moto*. It not only pursues the case which is against its own rules, but also gives no explanation for broadening its judgement to apply to all future cases seeking passive euthanasia when the case was confined to an individual (Aruna's) situation. Since it was not a PIL matter and the petition did not specify euthanasia as a collective concern, the SC surpassed its limits in giving such a judgement. This detail was concealed by a remarkable use of the two tones/stances mentioned above.

A hasty conclusion that can be drawn from this is that the SC does indulge in judicial overreach or judicial despotism in this case. However, one must pay attention to the fact that the SC rejected Aruna's petition. This decision, as our analysis reveals, takes into account only the opinion of the KEM hospital. Such a decision is contentious because they are her declared next friend and therefore their medical opinion cannot be viewed as an objective, neutral judgement. Moreover, the panel of doctors appointed by the SC do not give their opinion on what is in Aruna's best interest. Hence, the SC's decision in dismissing the petition on such weak grounds and incomplete information sets no precedent for the procedure it lays down. It is in this sense that the decision is not final and is still left open for the parliament to act upon.

Why? Why does the SC leave the decision open in such a manner while taking on a strong, authoritative posture throughout? The answer to this lies in the premises and beliefs upon which

⁷⁹ For example, the Vishakha case mentioned above or any case pertinent to say, marital rape or criminalisation of same-sex practices that may come to the SC's attention in the future are consistent with this argument.

the SC acts. Understanding this answers one of the two questions that this paper set out to answer which is: *What are the main assumptions of the SC while dealing with euthanasia which is a non-political issue?*

For this, two aspects that are expounded in our analysis are noteworthy. They are: 1) naturalisation of passive euthanasia along with the (deliberate) exclusion of active euthanasia, and 2) the minimum resource investment and exercise required from the governments in the execution stage of the proposed solution. These are important because here the SC defines and elucidates the problem in a certain way that is reflective of broader accepted themes in society before guiding us towards possible policy action⁸⁰. One conclusion that can be drawn from this observation is that the SC uses authoritative or assertive tones in combination with the three policy frames identified in order to deal with the *field's complexities*. It strikes an intermediate position between possible opposition that it may face in tackling such an issue from a judicial position and what it (perhaps) perceives to be its solution. This can be understood in terms of colligation, story-telling⁸¹ and the trade-off that Gill (2012) talks about⁸². This being the case, the final decision to permit passive euthanasia is not even close to judicial overreach, activism or despotism. Moreover, as mentioned before, the judges on the Bench in this case are prominent public figures who have often dealt with many controversial issues. While their verdicts in these cases have been strong and emotive, they have not restrained or taken over the government's domain of action⁸³. In fact, as mentioned earlier, Justice Katju⁸⁴ has publicly cautioned the judiciary of overstepping on several occasions.

Furthermore, the decision to dismiss the petition comes from the SC's way of seeing familial bonds. On one hand, it bases a crucial aspect of its judgement on notions of family so specific to India (and perhaps similar to other developing countries) but borrows directly from cases in the US and UK to overcome information deficiency for other parts of its judgement. There is no reference made to cases from other countries⁸⁵ with respect to passive euthanasia which may be comparable to India in terms of their political, social and economic structures. This aspect of the judgement resonates with the commonly held belief that knowledge produced in the West is superior to that in the rest of the world. Such a bias leading to conclusions based on incomplete information constrains the creation and flow of credible knowledge among and within countries in the South.

Having established this, it is now important to answer the main question of this paper which is: *How does the SC play a role in policy making of euthanasia which is a non-political issue?*

Kingdon, in his theory of policy agendas and windows, elaborates on 'softening up' process. According to this, policy advocates or entrepreneurs familiarise policy communities and public with their solutions or proposals. The idea is to build acceptance around them so they do not meet with resistance when an opportunity for a place on the decision agenda arises (Kingdon 2003: 128). While the issue was first recognized by Virani, the judgement can be seen as a softening up process leading towards a Parliamentary legislation on passive euthanasia. An evidence of this guiding subsequent actions can be found in the Law Commission Report (mentioned previously) that states "...the Law Commission has been asked "to give its considered report on the feasibility of making legislation on passive euthanasia, taking into account the earlier 196th Report of the Law Commission". This letter has been addressed in the aftermath of the judgement of the Supreme Court in *Aruna Ramachandra Shanbaug* (2011) 4 SCC 454" (Law Commission of India 2012: ii). This

⁸⁰ See Chapter 2; similar argument was made by Baumgartner et al. (2006).

⁸¹ See Chapter 3.

⁸² *Supra* note 82.

⁸³ *Supra* note 65.

⁸⁴ Even though he himself calls this decision judicial activism. See: <http://justicekatju.blogspot.nl/search?q=aruna+shanbaug+activism>

⁸⁵ See Chapter 5.

report has been influential in shaping the Bill introduced by the Government of India. The Bill adopts its recommendations that are a replication of the SC judgement.

Not just this, the SC also categorically declared section 309 IPC as an old-fashioned law that needs amendment by the Parliament in one part of the judgement. Here too, the SC is softening up its target audience that comprises of not just the public and other relevant specialists but also the government (more specifically, the legislature). This is because section 309 is a disputed matter and it is highly likely that such a declaration by the SC will have an effect (directly or indirectly) on any future decision in this regard.

Having said that, it should be clarified that this paper does not equate the role of the SC with that of a policy advocate or entrepreneur in Kingdon's theory. It would be inaccurate to do so because: 1) the SC neither spells out its stand on the issue in great detail nor does it actively promote it. It leaves the solution open for the government to act upon and 2) it neither exhibits high levels of persistence and determination nor does it show any brokerage skills⁸⁶ to continuously push passive euthanasia towards the decision agenda, for it deals with multiple cases in a day. Nonetheless, it certainly shares some features with policy entrepreneurs that enable it to soften up the policy environment for passive euthanasia. First, the SC's expertise comes from its position as one of the most notable institutions in a democratic setup. This position allows it to obtain/demand expertise in areas that it lacks. An example of this can be the submissions made by the AC or the doctors' panel in this case⁸⁷. Next, it follows from the organisational set-up of the SC and its recognized role as *parens patriae* that it has an ability to speak for others. And lastly, the final verdict displays innovation and creativity that enables the SC to present passive euthanasia in a favourable way in the policy stream to improve its chances of reaching the decision agenda⁸⁸ (Kingdon 2003: 180-184).

From this discussion, it is clear that the SC does take a vital part in the policy making process of euthanasia. However, as opposed to conventionally established claims, it is not an end without means. It is a means to a (desired) end. To achieve this, the SC shapes generally-accepted principles and ideas and prevalent policy worldviews⁸⁹ through an effective and innovative use of its legal instruments and provisions. In other words, it achieves this through – what we are calling – judicial entrepreneurship. It is important to note that this invalidates the assertion made by the SC advocate currently working on this case. She neglects the role that the SC plays as an important actor and claims that it has no say in the final policy outcome. She argues that it only has the power to interpret it at a later stage, reflecting an idealized notion of a competitive model of democracy (M. Bhattacharjee 2016, personal interview)⁹⁰.

This research paper gains its strength from its well-grounded and thorough analysis that has led to a fresh insight in the form of judicial entrepreneurship in the policy process of euthanasia. While the idea of judicial entrepreneurship cannot be established from one systematic study, it certainly contributes to generating knowledge and stimulating research in this unexplored area. In our course of analysis, we came across several aspects that have potential to generate insightful results if analysed methodically. For instance, the judgement in the Gian Kaur case overturned a previous judgement that held section 309 to be unconstitutional. This observation may have implications that are worth investigating to deepen our understanding of the SC's role in euthanasia's policy process. Other relevant studies could include the report of the Law Commission, Bill introduced by Government of India and other judgements analogous to this case. Also crucial, of course, is to re-examine this judgment with a focussed attention on the moral, religious and ethical

⁸⁶ Kingdon defines brokers as “negotiating among people, and making critical couplings” (2003:184).

⁸⁷ See chapter 4.

⁸⁸ See chapter 2, the US study on the relationship between court innovation and policy options supports this argument.

⁸⁹ *Supra* note 21.

⁹⁰ Personal interview with Advocate Madhumita Bhattacharjee at the Supreme Court of India, New Delhi on 18 July 2016.

aspects of the issue. It is only through such comprehensive studies that one can get past the impasse and arrive at optimal policy solutions for euthanasia. This paper has taken the first of the many steps in that direction.

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Appendix A

Table A1: List of Articles Referred to from the Constitution of India

Article 12	“In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.” (Constitution of India 2007: 6)
Article 21	“No person shall be deprived of his life or personal liberty except according to a procedure established by Law” (Constitution of India 2007: 10)
Article 32	“The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.” (Constitution of India 2007: 18)
Article 141	“The law declared by the Supreme Court shall be binding on all courts within the territory of India” (Constitution of India 2007: 69).
Article 142 (1)	“The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe” (Constitution of India 2007: 69-70).
Article 226 (1)	“Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of <i>habeas corpus</i> , <i>mandamus</i> , prohibition, <i>quo warrant</i> and <i>certiorari</i> , or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose” (Constitution of India 2007: 112-113)

Table A2: Description of Submissions and Affidavits Filed in the Aruna Shanbaug Case, as Presented in Aruna Ramachandra Shanbaug v. Union of India and others (2011: 4-38).

Counter Affidavit Dr. Amar Pazare (Professor & Head, KEM Hospital)	1. Aruna accepts food normally, like any of us. 2. Responds to the nursing staff.
Issued Statement Dr. Sanjay Oak (Dean, KEM Hospital)	1. Aruna is not in a coma. In medical terminology, she is in a state similar to cerebral palsy in a new born. 2. KEM nurses take care of her not as obligation but out of compassion. 3. It is their wish to take care of her till her <i>natural</i> death. 4. Indian society is not ready for accepting euthanasia as a law.
Report on the Medical Examination of Aruna (including a supplementary report) by the panel of doctors appointed by SC.	1. Meets most of the criteria for being in a Permanent Vegetative State (PVS). 2. KEM hospital should act as Aruna’s surrogate in the absence of immediate family. 3. If they act in her best interest and decide to withdraw life-sustaining treatment, it should not be considered unlawful.

Submission Mr. Shekhar Naphade (Counsel for petitioner)	1. Refers primarily to Gian Kaur vs. State of Punjab ⁹¹ to allow withdrawal of food supply. 2. Pinky Virani has written a book on Aruna and has been involved in the case since 1980.
Submission Attorney General for Union of India	1. Aruna has the right to live in her present condition. 2. Pinky Virani has no standing in the case. 3. Withdrawing life-support is illegal 4. Advances in medical technology may open up new possibilities of finding solutions to incurable conditions. 5. Relatives or doctors may misuse the provision if euthanasia is legalised.
Submission Mr. T.R. Andhyarujina (Senior Counsel and Amicus Curiae [AC] in the case)	1. A 'sound' patient has the right to make decisions regarding his body. 2. Passive euthanasia may be permitted in certain cases. 3. In case of incompetent patients, a decision that is in the best interest of the patient should be taken by doctors and not the courts.

⁹¹ The case was an appeal to the SC by one Gian Kaur and her husband convicted for abetment of suicide. Their appeal was based on an earlier case in P. Rathinam v. Union of India and another (1994) that declared section 309 (criminalisation of suicide) unconstitutional. The Gian Kaur verdict rejected this earlier judgement and declared that Article 21 does not include right to die but it does include the right to live with dignity (Smt. Gian Kaur vs. The State Of Punjab 1996).

Appendix B

Table B1: SC Judgement Presented in the Form of a List of Contents

1. Introduction with details of the writ petition, submission by the body of doctors appointed by the Court to explain Aruna's medical condition, submissions by counsels for all parties, from the dean of KEM hospital in Mumbai which resides Aruna and from the Senior Counsel who was appointed as Amicus Curiae in this case by the Court.	Page 2
2. Legal aspects of the case that recognize the different kinds and instances of euthanasia. For instance, active and passive euthanasia or voluntary and involuntary euthanasia.	Page 41
2.1. Active Euthanasia	Page 42
2.2. Legislation regarding physician assisted death or euthanasia in other countries	Page 45
2.3. Passive Euthanasia	Page 57
2.4. The Airedale Case	Page 59
2.5. Cases in the United States of America	Page 76
2.6. Law in India	Page 84
3. Investigating the conditions under which a person can be declared dead	Page 88
3.1. Brain Death	Page 89
3.2. Defining death in Aruna Shanbaug's case	Page 97
4. Laying down the law in India	Page 98
4.1. Withdrawal of life support system of incompetent patients (permanent vegetative state) in India	Page 98
4.2. Doctrine of Parens Patriae	Page 102
4.3. Provision of law under which the Court can grant approval for withdrawing life support to incompetent patients	Page 104
4.4. Procedure to be adopted by the High Court	Page 107
5. Judgement of the case at hand and acknowledgements	Page 108

Table B2: Analysis Table⁹²

Identification of Components	Clarify Meaning of Terms	Stated/Unstated Conclusions Stated/Unstated Assumptions Possible Counter-arguments/Rebuttals Rewording
<p>2. Euthanasia is one of the most perplexing issues which the courts and legislatures all over the world are facing today. This Court, in this case, is facing the same issue, and we feel like a ship in an uncharted sea, seeking some guidance by the light thrown by the legislations and judicial pronouncements of foreign countries, as well as the submissions of learned counsels before us. The case before us is a writ petition under Article 32 of the Constitution, and has been filed on behalf of the petitioner Aruna Ramachandra Shanbaug by one Ms. Pinky Virani of Mumbai, claiming to be a next friend.</p>	<p>Perplexing: Used to mean confusing or puzzling.</p> <p>One of the most perplexing issues: This puts or boxes (ethically/politically/ socially) complex issues in a category of confusing issues.</p> <p>A ship in an uncharted sea: A modified idiom which means the SC does not have sufficient experience in dealing with such a case.</p> <p>Uncharted: Unexplored or inexperienced. Used as an unfavourable term.</p> <p>Seeking some guidance by the light thrown by: Used as a trope. It means relying on assistance/help from experiences in other countries.</p> <p>Claiming: Used as an unfavourable term that means assertion without evidence/ proof.</p>	<p>Stated Assumption: Euthanasia is one of the most perplexing issues everywhere (forms the warrant for the stated conclusion).</p> <p>Stated Assumption: The Supreme Court of India too, like other foreign courts and legislatures, is in a difficult position with this case (forms the ground that supports the stated conclusion).</p> <p>Stated Conclusion: The ‘perplexing’ nature of the case calls for relying on foreign cases for guidance.</p> <p>Unstated Conclusion: Ms. Pinky Virani may not be an ideal ‘next friend’ in this case.</p> <p>Rewording: The Court is in a difficult and disadvantageous position because it lacks sufficient information and experience to examine the case at hand. For this purpose, it seeks assistance from the experience of foreign Courts and legislations of other similar cases and also of counsels of this particular case.</p>
<p>4. We could have dismissed this petition on the short ground that under Article 32 of the Constitution of India (unlike Article 226) the petitioner has to prove violation of a fundamental right, and it has been held by the Constitution Bench decision of this Court in <i>Gian Kaur vs. State of Punjab</i>, 1996(2) SCC 648 (vide paragraphs 22 and 23) that the right to life guaranteed by Article 21 of the Constitution does not include the right to die. Hence the petitioner has not shown violation of any of her fundamental rights. However, in view of the</p>	<p>Short ground: Means relatively small in scope. Used as a language of criticism denoting limited extent of Article 32 with respect to the context of the case.</p> <p>Merits: Suitable/worthy of the Court’s time. Language-in-use is one of authority.</p>	<p>Stated Assumption: Euthanasia is a complex and perplexing issue; at the same time it is also an important issue that needs attention.</p> <p>Stated Conclusion: The Court will explore the case further, given its <i>perplexing</i> BUT crucial nature.</p> <p>Stated Assumption: The Court has the authority to dismiss the case.</p> <p>Stated Assumption: According to the Constitution decision bench of the SC in <i>Gian Kaur vs. State of Punjab</i>, right to life guaranteed in Article 21 does not include the right to die (used as a warrant).</p> <p>Unstated Assumption: The Court has the authority to go deeper into the merits of the case, even though it doesn’t strictly abide by the rules for petition filed under Article 32.</p>

⁹² Full text of the judgement, available at: <http://judis.nic.in/supremecourt/imgst.aspx?file-name=37709>

importance of the issues involved we decided to go deeper into the merits of the case.		<p>Stated Conclusion: The petitioner has not shown any violation of fundamental rights and the case should ideally be dismissed.</p> <p>Possible counter-argument: The Constitution-bench decision of the SC in Gian Kaur vs. State of Punjab was based on an incorrect/incomplete premise and the judgement needs to be reviewed by the SC under Article 137 of the Constitution.</p>
<p>9. On 2.3.2011, the matter was listed again before us and we first saw the screening of the CD submitted by the team of doctors along with their report. We had arranged for the screening of the CD in the Courtroom, so that all present in Court could see the condition of Aruna Shanbaug. For doing so, we have relied on the precedent of the Nuremburg trials in which a screening was done in the Courtroom of some of the Nazi atrocities during the Second World War. We have heard learned counsel for the parties in great detail. The three doctors nominated by us are also present in Court.</p>	<p>‘Their’ here refers to the team of three doctors appointed by the Court to look into the medical condition of the patient.</p> <p>Arranged for the screening so that all present in Court could see the condition of Aruna Shanbaug: Language-in-use is one of praise. It highlights transparency and truthfulness.</p> <p>Precedent: Means previous case, experience or example.</p> <p>Arranged: Favourable term, it highlights the effort taken by the Court to organize the screening. Indicates the Court understands the importance and urgency of the issue.</p>	<p>Stated Assumption (paragraph 5 and 6): There is a variation between the writ petition and counter-affidavit. This calls for an investigation by an expert committee appointed by the Court.</p> <p>Unstated assumption: Nuremburg trials’ screening exhibits an exemplary case of accountability and legitimacy in justice delivery.</p> <p>Unstated Conclusion: The presence of the three doctors in Court is an indication of transparency.</p>
<p>14. It is thus obvious that the KEM hospital staff has developed an emotional bonding and attachment to Aruna Shanbaug, and in a sense they are her real family today. Ms. Pinky Virani who claims to be the next friend of Aruna Shanbaug and has filed this petition on her behalf is not a relative of Aruna Shanbaug nor can she claim to have such close emotional bonding with her as the KEM hospital staff. Hence, we are treating the KEM hospital staff as the next friend of Aruna Shanbaug and we decline to recognize Ms. Pinky Virani as her next friend.</p>	<p><i>Real</i> family: Praise language. Indicates the fact that the hospital staff took excellent care of her in the absence of her family.</p> <p>Next friend: Legal term used to refer to an individual that can fulfil the role of a family member, in their absence, in decision making.</p>	<p>Unstated Assumption: Emotional bonding and attachment indicate the characteristics of a family.</p> <p>Stated Conclusion: The KEM hospital staff, in caring for Aruna in the way they do, share a familial bond with her.</p> <p>Stated Conclusion: The hospital staff’s bond with Aruna cannot be compared to that of Pinky Virani’ who claims to be her next friend in the petition.</p> <p>Main Conclusion: Pinky Virani is not her next friend, the KEM hospital is.</p> <p>Unstated Conclusion: KEM hospital, as a whole, is in a position to take any decisions required regarding Aruna, considering she doesn’t have any family of her own.</p>
<p>19. We have carefully considered paragraphs 24 and 25 in Gian Kaur’s case (supra) and we are of the opinion that all that has been said therein is that the view in Rathinam’s</p>	<p>Construe: It means ‘to interpret’ in this context.</p> <p>Inconclusive: Used in the meaning of indecisive.</p>	<p>Stated Assumption: The Gian Kaur case’s interpretation of right to life does not include right to die in it.</p>

<p>case (supra) that the right to life includes the right to die is not correct. We cannot construe Gian Kaur's case (supra) to mean anything beyond that. In fact, it has been specifically mentioned in paragraph 25 of the aforesaid decision that "the debate even in such cases to permit physician assisted termination of life is inconclusive". Thus it is obvious that no final view was expressed in the decision in Gian Kaur's case beyond what we have mentioned above.</p>	<p>Specifically: Used to highlight its stated opinion that the verdict in Gian Kaur doesn't say anything conclusive about the debate to legally permit termination of life.</p> <p>Obvious: Indicates finality and definitiveness. The conclusion is arrived at based on the SC's interpretation of the Gian Kaur case.</p>	<p>Stated Assumption: Right to life cannot be extended to mean anything that implies that the right to die is a part of the former.</p> <p>Stated Conclusion: No definitive decision was taken in Gian Kaur's case about whether euthanasia (physician assisted killing or termination of life) should be allowed.</p> <p>Unstated Conclusion: The Counsel's interpretation of Gian Kaur case's verdict to allow euthanasia to Aruna Shanbaug is incorrect.</p>
<p>22. Mr. T. R. Andhyarujina, learned senior counsel whom we had appointed as Amicus Curiae, in his erudite submissions explained to us the law on the point. He submitted that in general in common law it is the right of every individual to have the control of his own person free from all restraints or interferences of others. Every human being of adult years and sound mind has a right to determine what shall be done with his own body. In the case of medical treatment, for example, a surgeon who performs an operation without the patient's consent commits assault or battery.</p>	<p>Amicus Curiae: An expert advisor to the Court in this case.</p> <p>Erudite: Favourable term. Means knowledgeable or scholarly. Used to highlight the expertise and capabilities of the appointed counsel.</p> <p>On the point: Praise-language. Used to mean that the counsel explained the law to the Court in an immaculate and flawless way.</p> <p>Battery: A legal term which means inflicting violence on another individual, which is unlawful. This can also involve violence that does not physically hurt the other individual.</p> <p>Adult years: According to the Indian Majority Act of 1875, a person who has completed 18 years is an adult.</p> <p>Sound mind: The definition or meaning of sound mind is unclear. It can mean different things to different people.</p>	<p>Rewording: Every individual (of sound mind and with complete information) has the right to make his own decision. A violation of this is unlawful.</p> <p>Stated Assumption: As Amicus Curiae, the senior counsel has a profound knowledge about the laws relevant to the case.</p> <p>Stated Main Conclusion: It is the senior counsel's submission that taking decisions on behalf of a competent individual without consent is unlawful and it can count as assault and battery.</p> <p>Unstated Conclusion: It is unlawful only in the case of adult individuals with a <i>sound mind</i>.</p>
<p>23. It follows as a corollary that the patient possesses the right not to consent i.e. to refuse treatment. (In the United States this right is reinforced by a Constitutional right of privacy). This is known as the principle of self-determination or informed consent.</p>	<p>Corollary: Used to mean a proposition (following from the stated conclusion earlier).</p> <p>Informed consent: Favourable term. Refers to decisions made in complete awareness and knowledge.</p> <p>Refuse treatment: Used in a favourable sense. By refusing treatment and not giving consent, an individual is practising his right.</p>	<p>Warrant: The US Constitutional Right to Privacy includes non-consent as a right.</p> <p>Stated Conclusion: Any patient who is an adult and is of sound mind has the right to not give consent to treatment.</p> <p>Rewording: The principle of self-determination or informed consent in the Indian Constitution allows an individual to refuse treatment. This is done by not giving consent. The same is in the case of the US, but under the right of privacy.</p>

	It is also an ambiguous term (time-wise) at this stage, for it doesn't specify when this right can be exercised. It is only explained in the second half of 24 that life support can either be discontinued or it has been conveyed at an earlier stage (through living wills in case of incompetent situations).	Possible counter-argument: [Unless this non-consent is a result of interferences of others.]
24. Mr. Andhyarujina differed from the view of the learned Attorney General in that while the latter opposed even passive euthanasia, Mr. Andhyarujina was in favour of passive euthanasia provided the decision to discontinue life support was taken by responsible medical practitioners.	<p>Even: Unclear usage, for it states that there may be more than one type of euthanasia but doesn't elaborate on them (paragraph placing in the judgement document).</p> <p>Passive Euthanasia: Phrase used for the first time. Not-defined here.</p> <p>Responsible: Favourable term, but broad and ambiguous.</p> <p>Decision: Used in an unclear and inconsistent way from one paragraph to the other.</p>	<p>Unstated Assumption: All doctors may not be <i>responsible</i>.</p> <p>Stated Assumption: It's the patient's right to decide to deny any treatment (following from earlier stated conclusion).</p> <p>Stated Conclusion: Learned Counsel submits that passive euthanasia is permissible if it the decision is taken by a <i>responsible</i> doctor/ practitioner. This differs from the views of the Attorney General.</p> <p>Possible Rebuttal: It is the competent patient's <i>decision</i> to not consent to or refuse medical treatment, as per general law and not the doctor's or the medical practitioner's. This is a contradiction of the earlier conclusion.</p>
25. If the doctor acts on such consent there is no question of the patient committing suicide or of the doctor having aided or abetted him in doing so. It is simply that the patient, as he is entitled to do, declines to consent to treatment which might or would have the effect of prolonging his life and the doctor has in accordance with his duties complied with the patient's wishes.	<p>Aided and abetted: Unfavourable term. Used to mean assist in one's suicide which is a criminal offence under section 309 of the Indian Penal Code.</p> <p>Entitled: Praise language highlighting the individuals' right to consent or not consent to treatment.</p> <p>It is simply that the patient, as he is entitled to do, declines to consent to treatment: Refers to naturalization.</p> <p>Prolong: Used as an unfavourable term in this context. It means to lengthen or to extend the natural span of life.</p> <p>Duties: Praise language. May be associated with responsible medical practitioners mentioned in the earlier paragraph.</p>	<p>Stated Assumption: It is one of the duties of doctors to comply with the wishes of his/her patients.</p> <p>Stated Assumption: Prolonging one's life through treatment is not always the preferred option.</p> <p>Stated Conclusion: If not giving treatment or discontinuing it is consented by the patient, then it is neither a case of suicide nor of abetment and aiding to suicide.</p> <p>Rewording: 'Passive' euthanasia (or withdrawing medical treatment) is permissible when it is carried out in accordance to the wishes and consent of the patient. In such a case, it neither accounts to suicide from patient's perspective nor abetment or aiding to suicide from a doctor's perspective.</p>
27. Absent any indication from a patient who is incompetent the test which is adopted by Courts is what is in <u>the best interest of the patient</u> whose life is artificially prolonged by such life support.	<p>Incompetent: Used as an antonym of competent mentioned in the earlier paragraphs. Not specifically defined.</p> <p>Best interest of the patient: Meaning is not specified by the Supreme Court (However, the</p>	Stated Assumption: There may be/are cases where a patient: 1) did not indicate his/her decision through a 'living will' in the past and 2) is currently not in a position to indicate and articulate his/her wishes.

<p>This is not a question whether it is in the best interest of the patient that he should die. The question is whether it is in the best interest of the patient that his life should be prolonged by the continuance of the life support treatment. This opinion must be formed by a responsible and competent body of medical persons in charge of the patient.</p>	<p>doctors' report defines it on page 25 of the judgement). Within this context, it is used as a favourable phrase. The subjective nature of 'best interest' makes it vague and broad.</p> <p>Artificially: Unfavourable term. Used as an antonym of natural. It is probably in this context that prolonging life is not always preferred (following from the previous stated assumption).</p> <p>Die: It is used in contrast with artificial prolongation of life (and not life).</p> <p>Must: Language-in-use indicates a tone of authority/assertion.</p> <p>Responsible and competent: Broad terms (not specifically defined). Used to highlight the ideal characteristics of doctors and medical practitioners responsible for withholding or withdrawing treatment.</p> <p>This is not a question whether it is in the best interest of the patient that he should die. The question is whether it is in the best interest of the patient that his life should be prolonged by the continuance of the life support treatment: This argument is drawn directly from the House of Lords judgement in the Airedale case. This is indicated in paragraph 71 of the judgement.</p>	<p>Unstated Assumption: Artificially prolonging one's life is not always in the <i>best interest</i> of the patient.</p> <p>Warrant: Most Courts adopt the 'principle of best interest' in cases of incompetent patients.</p> <p>Stated Conclusion: The applicable question is whether artificially prolonging a patient's life is in his/her best interest.</p> <p>Stated Main Conclusion: An opinion regarding this must be formed by a set of <i>responsible and competent</i> doctors.</p> <p>Unstated Conclusion: Only a responsible and competent body of doctors can decide whether it is in the best interest of the patient to prolong his/her life using life support treatment.</p> <p>Rewording: In case of <i>incompetent</i> patients, the course of medical action should be guided by what is in the best interest of the patient. This must be undertaken by a responsible and <i>competent</i> body of medical persons.</p>
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<p>28. The withdrawal of life support by the doctors is in law considered as an <u>omission</u> and not a positive step to terminate the life. The latter would be <u>euthanasia</u>, a criminal offence under the present law in UK, USA and India.</p>	<p>Omission: Means ‘exclusion’.</p> <p>Positive step: Used to mean ‘definitive’. In this context, it is unfavourable for it amounts to a criminal offence.</p> <p>Euthanasia: In this context, it is defined as a positive, definitive step to terminate life.</p>	<p>Rewording: Withdrawal of life support is not the same as euthanasia which is a criminal offence under the present law in UK, USA and India because it is not a positive step to end life.</p> <p>Stated Assumption: A positive step to terminate life is a criminal offence (used as a warrant).</p> <p>Stated Assumption: Withdrawal of life support is an omission.</p> <p>Unstated Assumption: ‘Omission’ is not a positive step to terminate the life.</p> <p>Main Stated Conclusion: Withdrawing life support is not a criminal offence.</p> <p>Main Stated Conclusion: Euthanasia is a positive step, and therefore a criminal offence under the present law UK, US and India.</p> <p>Possible counter-argument (drawn from possible rewording): Euthanasia and physician assisted death is a positive step to terminate life, an act which is legal in the Netherlands, Belgium and the US states of Oregon, Washington and Montana.</p>
<p>29. In such a situation, generally the wishes of the patient’s immediate family will be given due weight, though their views <u>cannot be determinative of the carrying on of treatment as they cannot dictate to responsible and competent doctors</u> what is in the best interest of the patient. However, experience shows that in most cases the opinions of the doctors and the immediate relatives coincide.</p>	<p>In such a situation: Refers to a situation where there is no indication or direction as to the course of action in case of an incompetent patient.</p> <p>Determinative: It means final or decisive.</p> <p>Responsible and competent: Used to serve the purpose of emphasis.</p> <p>However, experience shows that: Indicates naturalization. Seems to indicate that the immediate family’s opinions are consistent with the opinion of ‘competent’ doctors as they know what is in the best interest of the patient, unless in rare cases.</p>	<p>Stated Assumption: Opinions of immediate family members must be taken into account and given due consideration.</p> <p>Stated Assumption: Opinions of responsible and competent doctors must also be taken into consideration.</p> <p>Stated Conclusion: Opinions of the immediate family members cannot determine the carrying on of treatment.</p> <p>Unstated Conclusion: Opinions of the immediate family members are not superior to those of the doctors.</p> <p>Stated Conclusion: In most cases, opinions of family members and doctors both coincide as to what is in the best interest of the patient.</p> <p>Possible counter-argument: [Unless a member of the patient’s immediate family has recognized and accepted medical knowledge related to the case.]</p> <p>Possible rebuttal: There isn’t any evidence backing the stated conclusion that ‘experience shows that in most cases the opinions of the doctors and immediate relatives coincide’.</p>
<p>30. Whilst this Court has held that there is no right to die (suicide) under Article 21 of the Constitution and attempt to suicide is a crime vide Section 309 IPC, the Court has</p>	<p>Right to live with human dignity: vague term which is subjective, yet favourable.</p> <p>Premature: The dictionary meaning of the term is untimely or before the usual or proper time.</p>	<p>Unstated Assumption: The verdict given in the Gian Kaur case is relevant in this case.</p> <p>Stated Assumption: The right to life includes the right to live with human dignity, but not the right to die.</p>

<p>held that the right to life includes the right to live with human dignity, and in the case of a dying person who is terminally ill or in a permanent vegetative state he may be permitted to terminate it by a premature extinction of his life in these circumstances and it is not a crime vide Gian Kaur's case (supra).</p>	<p>This can, then be associated with 'artificial' mentioned by the Court earlier in a different context.</p> <p>Extinction: The dictionary meaning is one's natural way of dying.</p> <p>The use of premature and extinction together may be considered contradictory in this case.</p> <p>Vide: It means consult or refer to.</p>	<p>Stated Conclusion: Referring to the Gian Kaur case, it is not a crime to terminate a life if the patient is terminally ill or in a permanent vegetative state.</p> <p>Stated Conclusion: This is in accordance with the patient's right to live with dignity.</p>
<p>31. Mr. Andhyarujina submitted that the decision to withdraw the life support is taken in the best interests of the patient by a body of medical persons. It is not the function of the Court to evaluate the situation and form an opinion on its own. In England for historical reasons the parens patriae jurisdiction over adult mentally incompetent persons was abolished by statute and the Court has no power now to give its consent. In this situation, the Court only gives a declaration that the proposed omission by doctors is not unlawful.</p>	<p>Function of the Court: Means responsibilities, duties or jurisdiction.</p> <p>Opinion: Unfavourable term. Language-in-use is of criticism.</p> <p>The parens patriae: A legal term which means that the State is the legal guardian/ protector of citizens who are <i>incompetent</i> of protecting themselves (Constitution of India 2007)</p>	<p>Unstated Assumption: The Court has a pre-defined set of functions/responsibilities.</p> <p>Unstated Assumption: The England case is exemplary and is suited to fit the Indian case.</p> <p>Stated Main Conclusion: It is not the function of the Court to take decisions and give consent regarding withdrawal of life support. This is the responsibility of doctors and medical practitioners.</p> <p>Unstated Conclusion: The Supreme Court of India should not act as the parens patriae and let the body of medical doctors evaluate the situation in order to make informed decisions.</p> <p>Unstated Conclusion: The function of the Court is to only declare that the decision taken by the doctors is not inconsistent with the law.</p> <p>Possible counter-argument: The level of sophistication of mechanisms to ensure accountability of doctors may not be comparable in India and the UK and hence, the example may not be fitting.</p>
<p>38. Coming now to the legal issues in this case, it may be noted that euthanasia is of two types: active and passive. 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.</p>	<p>It may be noted: It is stated as fact.</p> <p>Lethal: Unfavourable term which means harmful or destructive. Military reference.</p> <p>Forces: Military reference to something forceful or influenced.</p> <p>To kill a person: Language-in-use is of criticism.</p>	<p>Unstated Conclusion: The definitions given of the two types of euthanasia – active and passive – are universal and should be accepted in this present form.</p>

<p>39. 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.</p>	<p>General: Naturalization term. It indicates that the legal situation where active euthanasia is illegal is shared by many countries. In countries where it is legal, it is achieved through legislation.</p> <p>Even without legislation: Indicates naturalization. Also highlights the contrast between active and passive euthanasia.</p>	<p>Stated Conclusion: All over the world, active euthanasia requires legislation to be legal, whereas passive euthanasia does not. It just requires certain safeguards in place.</p> <p>Unstated Conclusion: Active euthanasia is a criminal offence all over the world, except in a few countries where it is permitted through legislation.</p> <p>Possible rebuttal: [Unless the argument is factually inaccurate.] Physician assisted suicide is legal in Switzerland through legislation. However, this legislation does not permit active euthanasia; it criminalises physician assisted deaths in cases that involve corrupt and selfish motives. This means that the legality of active euthanasia comes from its criminalisation in specific cases. This is keeping in mind the definition of active euthanasia as ‘the use of lethal substances to kill as a person’</p>
<p>41. As already stated above active euthanasia is a crime all over the world except where permitted by legislation. In India active euthanasia is illegal and a crime under section 302 or at least section 304 IPC. Physician assisted suicide is a crime under section 306 IPC (abetment to suicide).</p>	<p>Already: Repetition, perhaps to serve the purpose of emphasis.</p> <p>Stated: The dictionary meaning of the term is asserting or communicating with a sense of definitiveness. The language-in-use therefore has a tone of authority.</p> <p>Crime: Unfavourable term used to indicate unlawfulness.</p> <p>All over the world: Used in the meaning of ‘universal’.</p> <p>Active euthanasia and physician assisted suicide not clearly defined. While the definition of ‘active’ euthanasia indicates the inclusion of the latter in it, the two are mentioned here as two distinct processes. Used inconsistently.</p>	<p>Warrant: Active euthanasia is a crime all over the world.</p> <p>Stated Conclusion: Active euthanasia and physician assisted suicide are illegal in India.</p> <p>Stated Conclusion: They are/can be decriminalised only by legislation.</p>
<p>44. The difference between "active" and "passive" euthanasia is that in active euthanasia, something is <i>done</i> to end the patient's life' while in passive euthanasia, something is <i>not done</i> that would have preserved the patient's life.</p>	<p>Done: An unfavourable term used to mean a deliberate act to terminate life. Language-in-use is one of criticism.</p> <p>Not done: Indicates ‘omission’ as mentioned before. It refers to refraining from doing something that can preserve a life.</p> <p>While: Indicates direct distinction between the two.</p> <p>End: Indicates finality or irreversibility. Unfavourable term. A subtle hint of criticism language.</p> <p>Preserve: Favourable term. It means keeping something in its original state.</p>	<p>Stated Conclusion: Active euthanasia is a deliberate, positive attempt at ending a person's life.</p> <p>Unstated Conclusion: As opposed to this, passive euthanasia is when steps are not taken to save a patient's life.</p>

	The definition of passive euthanasia is derived from the definition of active euthanasia.	
45a. An important idea behind this distinction is that in "passive euthanasia" the doctors are not actively killing anyone; they are simply not saving him.	<p>Actively: Unfavourable term with criticism language. It means vital/dynamic participation in a particular activity.</p> <p>Simply: It means merely. Language-in-use is of praise. Used to emphasize the contrasting characteristics of the two.</p> <p>Not saving: Used as a contrast - as opposed to actively killing.</p>	<p>Rewording: Passive euthanasia is not saving the patients while active euthanasia is engaging in active killing.</p> <p>Unstated Assumption: Inaction to save is preferred to action (in this case) where acting definitively leads to termination of life.</p> <p>Stated Conclusion: Not saving 'him' is tolerable in comparison with actively killing 'him'.</p>
45b. While we usually applaud someone who saves another person's life, we do not normally condemn someone for failing to do so.	<p>Normally, Usually: Used to mean ordinarily or under usual circumstances. Indicates naturalization.</p> <p>Condemn: Language-in-use is criticism. Used to mean blame or severely criticize. Used as an opposite of applaud.</p>	<p>Stated Assumption: Saving a life is applause worthy. However, not saving a life is not worthy of condemnation.</p> <p>Unstated Conclusion: Not saving a life does not call for (legal) prosecution (elaboration of the earlier stated conclusion).</p>
49. However, we are of the opinion that the distinction is valid, as has been explained in some details by Lord Goff in Airedale's case (infra) which we shall presently discuss.	<p>However: Used to mean in spite of (contrary viewpoints that the distinction is not valid).</p> <p>Infra: Means it is discussed in detail in the coming paragraphs.</p> <p>Airedale's case: The UK House of Lords, in 1993, allowed passive euthanasia to Tony Bland who suffered serious injuries in the Hillsborough disaster leaving him in a permanent vegetative state.</p> <p>Indicates a non-serious tone towards the contrary viewpoints, as if they were unintelligent or not very significant.</p>	<p>Unstated Assumption: Judgement in Airedale's case is a suitable model to rely on to justify the distinction in the Indian case.</p> <p>Stated Conclusion: The distinction between passive euthanasia and active euthanasia is valid.</p> <p>Possible counter-argument: Relying heavily on one judgement is insufficient to justify the distinction between active and passive euthanasia.</p>
50. Although in the present case we are dealing with a case related to passive euthanasia, it would be of some interest to note the legislations in certain countries permitting active euthanasia. These are given below	<p>Although: It means 'in spite of the fact that' or 'despite'.</p> <p>The argument has an assertive tone. It declares that the present case only deals with the legality of passive euthanasia and not active euthanasia.</p> <p>Some: Indicates a tone of indifference.</p>	<p>Main Stated Conclusion: The present case only deals with passive euthanasia.</p>

<p>52b. In India, if a person consciously and voluntarily refuses to take life saving medical treatment it is not a crime. Whether not taking food consciously and voluntarily with the aim of ending one's life is a crime under section 309 IPC (attempt to commit suicide) is a question which need not be decided in this case.</p>	<p>Consciously and voluntarily: Refers to a fully informed decision made in <i>sound mind</i> and without the influence of others.</p> <p>Section 309 of the IPC: Explained in detail in para 100 below.</p> <p>Last line has a slight hint or indication of an advisory tone.</p>	<p>Stated Conclusion: Refusing treatment consciously and voluntarily does not amount to crime.</p> <p>Stated Conclusion: Consciously and voluntarily refusing food with the intention of ending life may or may not amount to a crime.</p> <p>Unstated Conclusion: While the question of whether refusing food falls under section 309 of the IPC does not demand a decision at the moment, it is nonetheless relevant.</p> <p>Possible counter-argument: [Unless it is a religious issue. The Jain tradition of consciously rejecting food, that is fasting until death (Sallek-hana/Santhara) is not a crime in India.]</p>
<p>53. Non voluntary passive euthanasia implies that the person is not in a position to decide for himself e.g., if he is in coma or PVS. The present is a case where we have to consider non voluntary passive euthanasia i.e. whether to allow a person to die who is not in a position to give his/her consent.</p>	<p>PVS: Permanent Vegetative State</p> <p>Non voluntary: Refers to cases dealing with incompetent patients (as mentioned earlier in paragraph 26).</p> <p>Consider: Used here to mean 'examine carefully'. Slight hint of a tone of protection.</p>	<p>Stated Assumption: Non-voluntary passive euthanasia deals with patients who are not in a position to give consent.</p> <p>Stated Conclusion: The present case is a case of non-voluntary passive euthanasia.</p> <p>Unstated Conclusion: The SC must make a decision regarding whether they should allow non-voluntary passive euthanasia.</p> <p>Possible counter-argument (drawn from possible rewording): The present case is a case of non-voluntary euthanasia for Aruna Shanbaug. Therefore, the SC must make a decision regarding whether they should allow non-voluntary passive euthanasia to Aruna Shanbaug.</p>
<p>60. The broad issue raised before the House of Lords in the Airedale case (supra) was "In what circumstances, if ever, can those having a duty to feed an invalid lawfully stop doing so?" In fact this is precisely the question raised in the present case of Aruna Shanbaug before us.</p>	<p>Broad: Used to mean 'covering a large scope'.</p> <p>Invalid: Refers to an individual who is disabled.</p> <p>Precisely: It means exactly. Favourable term. Justifies leaning on the Airedale case in order to make a decision for Aruna Shanbaug.</p>	<p>Stated Conclusion: The issue raised before the House of Lords in the Airedale case is the same issue that is raised before the Supreme Court in the Aruna Shanbaug case.</p> <p>Unstated Conclusion: It is a model case to rely on to make decisions in the case of Aruna Shanbaug.</p> <p>Possible counter-argument to the unstated conclusion: [Unless the circumstances in both cases are different.] Sanjay Oak, Dean of KEM hospital, mentions in his affidavit that the nursing staff took care of Aruna Shanbaug day and night for 38 years not out of duty but out of a feeling of oneness (as mentioned on page 27-28).</p>
<p>66. Given that existence in the persistent vegetative state is of no benefit to the patient, the House of Lords then considered whether the principle of the sanctity of life which is the concern of the State (and the Judiciary is one of the arms of the State) required the Court to hold that medical</p>	<p>Persistent Vegetative State: Refer to section 76 below for definition.</p> <p>Given that: Used to indicate the premise of the argument.</p> <p>No benefit: Refers to a case where a patient has been in a PVS from six months to maximum one year with no signs of recovery. In such a situation, there is no scope</p>	<p>Stated Assumption: Existence in PVS after a certain period of time is of no benefit to the patient (used as a ground).</p> <p>Stated Assumption: The principle of sanctity of life comes under the purview of the State.</p> <p>Stated Assumption: The Judiciary is a part of the State (used as a warrant).</p>

<p>treatment to Bland could not be discontinued.</p>	<p>of recovery in the future (as explained in paragraph 63).</p> <p>Sanctity of life: Refers to the idea that life is sacred and holy and must be preserved. And it is the duty of the State to uphold it in applicable situations.</p>	<p>Unstated Conclusion: The State, taking into consideration the principle of sanctity of life, must make a decision.</p> <p>Stated Conclusion: The Court, as a part of the State, must decide whether to allow medical treatment to be discontinued or not in the Bland case.</p>
<p>75. Airedale (1993) decided by the House of Lords has been followed in a number of cases in U.K., and the law is now fairly well settled that in the case of incompetent patients, if the doctors act on the basis of informed medical opinion, and withdraw the artificial life support system if it is in the patient's best interest, the said act cannot be regarded as a crime.</p>	<p>Fairly: Favourable term. Used to mean 'reasonably'.</p> <p>Now fairly well settled: Seems to imply that it is fairly/reasonably accepted. Doesn't specifically mention where. Is it just in the UK or also in the other parts of the world <i>now</i>?</p> <p>Artificial: Unfavourable term. Indicates unnatural sustenance of life.</p> <p>On the basis of informed medical opinion: Indicates that the decision is a well-informed and instructed.</p>	<p>Stated Assumption: The verdict of the Airedale case is reasonable/fairly accepted.</p> <p>Stated Assumption: In case of incompetent patients, it is the doctors that act on the basis of an informed medical opinion. If withdrawing life support systems is in a patient's best interest, then it is not a criminal offence.</p> <p>Stated Conclusion: Subsequent to the Airedale case, the decision has been followed in a number of other cases in the UK (and perhaps also in other countries?).</p> <p>Unstated Conclusion: This judgement can also be replicated in the Indian case (See: Stated Main Conclusion in 27).</p> <p>Possible counter-argument: The Airedale and the Shanbaug case are not similar, in the sense that the nature of the medical condition of both patients is not comparable (see page 39 of the judgement).</p>
<p>76. The question, however, remains as to who is to decide what the patient's best interest is when he is in a persistent vegetative state (PVS)? Most decisions have held that the decision of the parents, spouse, or other close relative, should carry weight if it is an informed one, but it is not decisive (several of these decisions have been referred to in Chapter IV of the 196th Report of the Law Commission of India on Medical Treatment to Terminally ill Patients).</p>	<p>Persistent Vegetative State: Irreversible condition in which a patient shows no higher brain functions. Unfavourable. It is defined as "a condition in which a person exhibits motor reflexes but evinces no indication of significant cognitive function" (see page 78 of the judgement).</p> <p>Carry weight: It means significant or influential.</p> <p>Not decisive: It means it is not conclusive – a decision made by the patient's parents, spouse or close relative is not final even if it is an informed one.</p> <p>'But it is not decisive': Has a tone of authority.</p> <p>Law Commission of India: It is an executive body that deals with legal reforms.</p> <p>Chapter IV of the 196th report deals with all cases in the UK and Ireland before and after the Airedale verdict.</p>	<p>Unstated Assumption: Withdrawing medical treatment, if it is in the patient's best interest, is not a crime (followed from earlier assumptions and conclusions).</p> <p>Warrant: In many cases in UK and Ireland, decisions made by the patient's spouse, parents etc. are significant but not decisive (which is also acknowledged in the Law Commission Report).</p> <p>(Possible) Unstated Conclusion: The same can be replicated in India.</p> <p>Possible counter-argument: [see possible counter-argument in 75 above]</p>

<p>100. <i>We are of the opinion</i> that although Section 309 Indian Penal Code (attempt to commit suicide) has been held to be constitutionally valid in Gian Kaur's case (supra), <i>the time has come when it should be deleted by Parliament as it has become anachronistic</i>. A person attempts suicide in a <i>depression</i>, and hence he needs help, rather than punishment. We therefore recommend to Parliament to consider the feasibility of deleting Section 309 from the Indian Penal Code.</p>	<p>Section 309 of the Indian Penal Code penalises any individual who attempts to commit suicide.</p> <p>Anachronistic: Language-in-use is of criticism. Used to refer to something that is old fashioned and not suited to the times we live in.</p> <p>Depression: Used vaguely. Draws an incomplete picture, for there can be many reasons that lead to one's suicide.</p> <p>'We recommend to the parliament': The Court recommends or advises perhaps because it is only the parliament that can take an ultimate decision in the matter, as per the separation of power doctrine.</p> <p>It also has a tone of concern for 'depressed' individuals who need help, and not punishment.</p>	<p>Stated Assumption: A person attempting to commit suicide is in need of help, not punishment by the State.</p> <p>Unstated Assumption: This is a matter that needs to be handled by the Parliament.</p> <p>Stated Assumption: Section 309 of the IPC is anachronistic and old fashioned. It does not fit in with the times we live in,</p> <p>Stated Conclusion: It should be deleted and made constitutionally invalid by the Parliament.</p> <p>(Possible) Unstated Conclusion: A competent, sound person not consenting to medical treatment or voluntarily rejecting food should not be culpable under section 309 – reflected also in the stated conclusion of paragraph 25 and 33 of the judgement.</p>
<p>102. This is an extremely important question in India because of the unfortunate low level of <i>ethical</i> standards to which our society has descended, its raw and widespread commercialization, and the rampant corruption, and hence, the Court has to be very cautious that unscrupulous persons who wish to inherit the property of someone may not get him eliminated by some crooked method.</p>	<p>Question that is being referred to here is: in case of incompetent patients, who can give consent or decide whether to continue or withdraw life support?</p> <p>Unfortunate: Language-in-use is criticism.</p> <p>Ethical: Used ambiguously to encompass the various interpretations of the meaning of the term.</p> <p>Raw: Unfavourable term. Strong term indicating our society's unsophisticated ways of commercialisation.</p> <p>Unscrupulous: Unfavourable term. Indicates unethical standards of people mentioned earlier. Here, it refers to those individuals who resort to crooked ways to inherit someone else's property.</p> <p>Corruption: Used in a narrow sense to refer to selfish and greedy motives of individuals to make money or inherit property.</p> <p>Inherit the property of someone: This may also be indicative of the poorly defined property rights in India, which makes it easier for</p>	<p>Stated Assumption: India has high levels of commercialisation and corruption and low levels of ethical standards.</p> <p>Stated Conclusion: The <u>Court</u> must be cautious of people who use unfair means to eliminate someone in their attempt to inherit property.</p> <p>Unstated Conclusion: The question of who can decide whether life support should be continued or not in the case of incompetent patients needs to be addressed.</p> <p>(Possible) Unstated Conclusion: The Court must take into consideration the low levels of ethical standards in our country <i>before</i> taking a decision in this matter.</p>

	<i>unscrupulous</i> persons to take advantage of the situation.	
103: Also, since medical science is advancing fast, doctors must not declare a patient to be a hopeless case unless there appears to be no reasonable possibility of any improvement by some newly discovered medical method in the near future .	<p>Must not declare: Indicates an assertive tone by the Court.</p> <p>Since medical science is advancing fast: This is in response to (or keeping in mind) the argument put forward by the Attorney General appearing for Union of India.</p> <p>Near future: Ambiguous term, does not define how near is near future.</p>	<p>Stated Assumption: Medical science and technology are changing and advancing fast.</p> <p>Stated Conclusion: The doctors must not declare a person irrecoverable unless there are no possibilities of any medical breakthrough in the future.</p> <p>Unstated Conclusion: Doctors, based on their knowledge and foresight, have an instrumental role to play in deciding the course of the patients' treatment.</p>
104. However, we make it clear that it is experts like medical practitioners who can decide whether there is any reasonable possibility of a new medical discovery which could enable such a patient to revive in the near future .	<p>Experts like medical practitioners: Indicates any other experts who are relevant in that particular case.</p> <p>Near future is used vaguely, for an example cited by the Court earlier describes a man called Terry Wallis who regained consciousness after being in a coma for 24 years.</p>	<p>Stated Conclusion: It is up to the doctors to decide if there's a possibility that a patient condition could be changed as a result of medical discoveries (following from the unstated conclusion from 103).</p> <p>Possible counter-argument: Unless medical practitioners also succumb to our society's low ethical standards and high levels of corruption and commercialization (see stated assumption in 102).</p>
105. It is alleged in the writ petition filed by Ms. Pinky Virani (claiming to be the next friend of Aruna Shanbaug) that in fact Aruna Shanbaug is already dead and hence by not feeding her body any more we shall not be killing her. The question hence arises as to when a person can be said to be dead?	<p>Alleged: Criticism language. In this context, it may indicate stating something without (concrete) proof.</p> <p>In fact: Emphasises on the claim that Aruna Shanbaug is dead.</p>	<p>Stated assumption: The writ petition filed by Ms. Pinky Virani alleges that Aruna Shanbaug is dead and that not feeding her will not amount to killing her.</p> <p>Stated Conclusion: The question that needs to be answered is: When is a person considered to be dead?</p> <p>Unstated Conclusion: A decision in a <i>perplexing</i> case like this can be made only after a thorough understanding of when a person is considered to be dead.</p> <p>Rewording: It's essential in this case to understand exactly what one means by death and when a person is considered to be dead.</p>

<p>121. From the above angle, it cannot be said that Aruna Shanbaug is dead. Even from the report of Committee of Doctors which we have quoted above it appears that she has some brain activity, though very little.</p>	<p>Above angle: This refers to para 112 to 120 where the Court quotes definitions and explanation of 'brain death' given by Universal Determination of Death Act (US Legislation), President's Committee on Bio-ethics in the United States of America (2008), American Uniform Definition of Death Act (1980) and Transplantation of Human Organs Act, 1994 enacted by the Indian Parliament.</p> <p>According to this, a person is said to be dead when all functions of the brain stem have stopped. This is different from a PVS where the brain stem is alive.</p>	<p>Unstated Assumption: The meanings and definitions given by the said experts are relevant and suited to this case.</p> <p>Stated Assumption: The definition of brain death is not the same as Aruna Shanbaug's medical condition (established by the panel of doctors appointed by the Court).</p> <p>Stated Conclusion: Aruna Shanbaug cannot be declared a dead person.</p> <p>Unstated Conclusion: Aruna Shanbaug is in a PVS, and not dead. The claim in the writ petition filed by Ms. Pinky Virani is inaccurate/incorrect.</p>
<p>125. However, there appears little possibility of her coming out of PVS in which she is in. In all probability, she will continue to be in the state in which she is in till her death. The question now is whether her life support system (which is done by feeding her) should be withdrawn, and at whose instance?</p>	<p>In all probability: Indicates certainty.</p> <p>Instance: Used to mean reference. It may mean who makes the decision as to whether her life support system should be withdrawn.</p>	<p>Stated Assumption: Aruna Shanbaug will continue to be in a PVS till her death.</p> <p>Unstated Assumption: She is not considered to be an already dead person.</p> <p>Stated Conclusion: The question now is not whether she is dead or alive. The question is: should her life support system be withdrawn or not? Who makes such a decision for the patient?</p>
<p>126. There is no statutory provision in our country as to the legal procedure for withdrawing life support to a person in PVS or who is otherwise incompetent to take a decision in this connection. We agree with Mr. Andhyarujina that passive euthanasia should be permitted in our country in certain situations, and we disagree with the learned Attorney General that it should never be permitted. Hence, following the technique used in Vishakha's case (supra), we are laying down the law in this connection which will continue to be the law until Parliament makes a law on the subject.</p>	<p>Statutory provision: A law passed by the legislature, usually written.</p> <p>Laying down: Indicates an assertive tone. It means putting forward as an assertion.</p> <p>'We agree with Mr. Andhyarujina that passive euthanasia should be permitted in our country in certain situations, and we disagree with the learned Attorney General that it should never be permitted': This argument is derived from the AC's inconsistent views (as mentioned in para 23 and 24 above). Thus, it is a weak and an unconvincing argument.</p>	<p>Stated Assumption: Learned Senior Counsel and the AC of the case believes that passive euthanasia should be allowed in certain cases.</p> <p>Stated Assumption: There is no law in our country that guides us in the case of incompetent patients and decisions regarding their life support systems.</p> <p>Stated Conclusion: Passive euthanasia should be allowed in certain cases, and cannot be made illegal without knowing the merits of the case.</p> <p>Stated Assumption: The Court, with good reason, took a firm decision in the Vishakha case in the absence of a law. It laid down provisions as to the sexual rights of employees at the work place.</p> <p>Stated Conclusion: In this case too, the Court is declaring a law which does not criminalise passive euthanasia in certain cases.</p>

		<p>Stated Conclusion: The Parliament makes the final law on the subject. Until then, the law put forth by the SC will prevail.</p> <p>Possible counter-argument: The Vishakha case was a PIL case seeking enforcement/implementation of fundamental rights of working women in India. The case at hand is not a PIL case. It is a writ petition under article 32 seeking passive euthanasia for a specific individual named Aruna Shanbaug.</p>
<p>126(i-a). As already noted above, it is the KEM hospital staff, who have been amazingly caring for her day and night for so many long years, who really are her next friends, and not Ms. Pinky Virani who has only visited her on few occasions and written a book on her. Hence it is for the KEM hospital staff to take that decision. The KEM hospital staff have clearly expressed their wish that Aruna Shanbaug should be allowed to live.</p>	<p>Who has only visited her on few occasions and written a book on her: Criticism language – doubting/questioning her claim as Aruna Shanbaug’s next friend.</p> <p>Day and night: Metaphorical use which means relentlessly cared for her. Praise language.</p> <p>‘Hence it is for the KEM hospital staff to take that decision’: consistent with the opinion expressed in the report submitted by the panel of doctors appointed by the SC.</p>	<p>Unstated Assumption: It is the patient’s spouse, parents, family or anyone that can be considered next of kin should decide whether life support should be continued or not. The doctors play a role in this too. But the decision should be in the best interest of the patient (refer to earlier paragraphs).</p> <p>Stated Assumption: The KEM hospital staff have relentlessly cared for Aruna Shanbaug for many years.</p> <p>Stated Conclusion: It is the KEM staff that is Aruna’s next friend and not Ms. Pinky Virani.</p> <p>Stated Conclusion: It is up to the hospital staff to decide whether Aruna’s life support should be withdrawn or not.</p> <p>Possible counter-argument: The opinion of medical practitioners/doctors and that of the patient’s family are the same in this case, for it is the KEM hospital that is Aruna’s next friend and report submitted by the panel of doctors doesn’t specify what is in the best interest of the patient. Is the decision then well-informed and well-grounded?</p> <p>Stated Assumption: They have clearly stated their wish to let Aruna live.</p> <p>Unstated Conclusion: Aruna Shanbaug will not be allowed passive euthanasia, since it is against the wishes of her next friend.</p>
<p>126(i – b). However, assuming that the KEM hospital staff at some future time changes its mind, in our opinion in such a situation the KEM hospital would have to apply to the Bombay High Court for approval of the decision to withdraw life support.</p>	<p>Assuming: Used to mean ‘in case KEM Hospital Staff changes its mind’ regarding its decision.</p>	<p>Stated Assumption: KEM hospital changes its mind.</p> <p>Stated Conclusion: KEM hospital must seek the State High Court’s approval.</p> <p>Unstated Conclusion: Even though the decision is made by the family, doctors or next friend it needs to be approved by the judiciary.</p>
<p>126(ii) Hence, even if a decision is taken by the near relatives or doctors or next</p>	<p>Even if: Indicates that the decision taken by relatives and doctors is not final.</p>	<p>Rewording: A decision to withdraw life support taken by the patient’s near relatives or doctors needs to be approved by the High Court to avoid misuse.</p>

<p>friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in Airedale's case (supra).</p> <p>In our opinion, this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient.</p>	<p>Even more necessary: Criticism language. Used in comparison to the UK, where the provision is borrowed from.</p> <p>It is unclear as to what are the other reasons, if there are any, that this provision is borrowed from the Airedale case.</p> <p>The highlighted part in red is vague, for it indicates that there may be reasons, in addition to the one stated (that makes it very relevant in the Indian context), for the inclusion of this provision.</p> <p>Mischief: Unfavourable term. Refers to the <i>unscrupulous</i> and <i>unethical</i> persons mentioned above.</p>	<p>Stated Assumption: The possibility of relatives (or doctors) resorting to unlawful means to inherit the patient's property cannot be ruled out.</p> <p>Stated Conclusion: Any decision made to withdraw life support should be approved by High Court as a safeguard measure.</p> <p>Possible counter-argument: [Unless the state High Courts are also comprised of <i>mischievous</i> individuals]</p>
<p>127b. In our opinion, while giving great weight to the wishes of the parents, spouse, or other close relatives or next friend of the incompetent patient and also giving due weight to the opinion of the attending doctors, we cannot leave it entirely to their discretion whether to discontinue the life support or not. We agree with the decision of the Lord Keith in Airedale's case (supra) that the approval of the High Court should be taken in this connection. This is in the interest of the protection of the patient, protection of the doctors, relative and next friend, and for reassurance of the patient's family as well as the public. This is also in consonance with the doctrine of <i>parens patriae</i> which is a well-known principle of law.</p>	<p>Great weight: this is used in comparison with the weight given to the doctors' opinion in this matter. The Court states that wishes of the family/next friend will be given more importance than that of the doctors in decisions regarding withdrawal of life support.</p> <p>This is not consistent with argument made in the earlier section (see unstated conclusion in paragraph 29)</p> <p>Discretion: Means complete freedom to decide.</p> <p>Consonance: In accordance with or consistent with. Favourable term.</p> <p>Parens patriae: See para 31 above. Language-in-use is of praise.</p> <p>The argument also has a tone of protection – Courts as the protector of patients, doctors, relatives, next friend and the public.</p> <p>Well-known principle of law: Used as a way of indicating universal legitimacy or acceptance. Can be seen as an attempt towards naturalization.</p>	<p>Rewording: While a great amount of importance should be given to the wishes of the relatives/next friend and due amount to the opinion of doctors, the final decision to approve these wishes and opinions lies with the High Court, as <i>parens patriae</i>.</p> <p>Stated Assumption: Interests of patients, doctors, relatives, next friend need to be protected (clarifies the highlighted part in red in the earlier paragraph of this table).</p> <p>Warrant: The Courts, as <i>parens patriae</i>, have interests of the public in mind.</p> <p>Stated Conclusion: The decision to withdraw life support should be approved by the High Court.</p> <p>Unstated (Main) Conclusion: The decision taken by the High Court will always be <i>in the best interest</i> of the patient in particular and the public in general.</p> <p>Possible counter-argument: [See possible counter-argument in 126(ii) above]</p> <p>Possible counter-argument: The government has more resources to identify and correct corrupt practices. Therefore, the authority to approve withdrawal of life support should be left with relevant government authorities (as part of the State).</p>
<p>132. In our opinion, in the case of an incompetent person who is unable to take a decision whether to withdraw</p>	<p>The entire paragraph has a dual tone of authority or assertion</p>	<p>Stated Conclusion: Views of all actors involved must be given due weight.</p>

<p>life support or not, it is the Court alone, as parens patriae, which ultimately must take this decision, though, no doubt, the views of the near relatives, next friend and doctors must be given due weight.</p>	<p>and protection ('of an incompetent person who is unable to take a decision...').</p>	<p>Stated Main Conclusion: It is the Court alone that makes the final decision, taking into account all the views.</p> <p>Unstated Conclusion: It is <u>only</u> the Court, in the capacity of parens patriae, which is in a position to take an impartial and informed decision on behalf of incompetent patients (extension of the earlier unstated conclusion).</p> <p>Possible counter-argument: According to the principle, it is the State that must act as parens patriae and not the Courts alone (whether they are a part of the State or not in contested).</p>
<p>137. No doubt, the ordinary practice in our High Courts since the time of framing of the Constitution in 1950 is that petitions filed under Article 226 of the Constitution pray for a writ of the kind referred to in the provision. However, from the very language of the Article 226, and as explained by the above decisions, a petition can also be made to the High Court under Article 226 of the Constitution praying for an order or direction, and not for any writ. Hence, in our opinion, Article 226 gives abundant power to the High Court to pass suitable orders on the application filed by the near relatives or next friend or the doctors/hospital staff praying for permission to withdraw the life support to an incompetent person of the kind above mentioned.</p>	<p>Ordinary: Refers to the standard practice of the High Courts.</p> <p>However, from the very language of the Article 226: Refers to how a certain section of the Article is missed/overlooked in the standard practice of the Courts (this can be seen as an attempt to reverse naturalization in this context).</p> <p>From the very language: Used to highlight the existing part of Article 226 and not an interpretation of it.</p> <p>Abundant: Favourable term. Used as an antonym of scarce or inadequate. It means that the High Court is well equipped to take suitable decisions in such cases.</p> <p>Article 226 gives abundant power to the High Court: It means that it is in the provision of the Constitution to allow the High Court to take a final decision in matters of incompetent patients through passing suitable orders.</p>	<p>Stated Assumption: Petitions filed under Article 226 only pray for issuing writs to certain individual(s) or authority, but not directions and orders.</p> <p>Stated Conclusion: Article 226 clearly includes provision to issue directions and orders.</p> <p>Stated Conclusion: According to the Constitution, the High Courts have the power to take final decisions in this matter <i>after</i> a petition has been made to allow for passive euthanasia for an incompetent patient.</p> <p>Unstated Conclusion: The petitions for issuing orders and directions in such cases should be forwarded to the state High Courts, and not the Supreme Court.</p> <p>Possible counter-argument: The Supreme Court enjoys more legitimacy with the Indian public (with provisions like PILs etc.) than the state High Courts. Therefore, people may not approach High Courts (which may lead to more corrupt practices).</p>
<p>140. Simultaneously with appointing the committee of doctors, the High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse, brothers/sisters etc. of the patient, 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 bench should give its verdict. The</p>	<p>State: Refers to the state government and state legislature. The High Court shall notify and keep the State as well as the patients' family and spouse informed.</p> <p>Verdict: It means 'final decision'. Indicates a tone of authority and assertion.</p> <p>'The High Court Bench shall also issue notice to the State and close relatives e.g. parents, spouse,</p>	<p>Unstated Assumption: The government is a vital party in the process.</p> <p>Stated Main Conclusion: The views of the <i>State</i>, doctors and patients will be taken into account before the Court gives its verdict.</p> <p>Stated Conclusion: The decision in this matter is taken by the High Court only through this procedure. This is until the Parliament makes a legislation in this case.</p> <p>Unstated Conclusion: Till a legislation is made, the views of the State are taken into consideration but are not decisive in any manner.</p>

above procedure should be followed all over India until Parliament makes legislation on this subject.	brothers/sisters etc. of the patient': Has a slight hint of restraint as to the role of the State.	
142. The High Court should give its decision assigning specific reasons in accordance with the principle of 'best interest of the patient' laid down by the House of Lords in Airedale's case (supra). 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 .	Assigning: Has a tone of authority. Shall not be summary in nature: It indicates that the High Court's decision should be backed/ strengthened by reasons consistent with the principle of the patients' best interests.	Stated Assumption: The decision will be based on the views of relatives and doctors and in accordance with the 'best interests' principle explained the Airedale verdict. Stated Conclusion: The decision will be accompanied by a detailed explanation of the same. Possible counter-argument: There may be a more fitting explanation of 'best interests' from other examples and experiences of the world (now or in the future) that complements the characteristics of the Indian structure of competitive democracy better.
143. With these observations, this petition is dismissed .	Dismissed: It means that Court does not accept the petition.	Stated Assumption: The observations explain the decision made. Stated Conclusion: The writ petition by Pinky Virani to allow withdrawal of life support for Aruna Shanbaug is dismissed.

Table B3: Metaphor Analysis using Steger's 3-step Analysis

I. "This Court, in this case, is facing the same issue, and we feel like a ship in an uncharted sea, seeking some guidance by the light thrown by the legislations and judicial pronouncements of foreign countries, as well as the submissions of learned counsels before us."

<p>Step 1: Metaphor Identification and Selection</p> <p>On what basis are the metaphors selected? What are the indicators?</p>	<ol style="list-style-type: none"> 1. <i>Relatedness</i>: It is associated with the central theme. The SC judgement compares itself to 'a ship in unchartered sea' as it looks into a matter dealing with euthanasia which is a 'perplexing' issue everywhere. It needs direction and assistance from foreign cases. 2. <i>Emotion</i>: It is used to express the helpless, difficult situation it is in. 3. <i>Near Universality</i>: The tone of the metaphor remains (more or less) the same in different contexts.
<p>Step 2: General Metaphor Analysis</p> <p>What is the general meaning of the metaphor? Understanding it independently from its context.</p>	<ol style="list-style-type: none"> 1. <i>Comparisons</i>: Other metaphors like 'entering the murky waters', 'draw a picture', 'shed some light' etc. can be employed to communicate the same idea. 2. <i>Associations</i>: The first part can be associated with darkness, confusion, vulnerability, unfamiliarity, inexperience, responsibility etc. The second part can be associated with satisfaction, knowledge, hope, relief, right path etc. 3. <i>Function, Role or Target</i>: The metaphor signals towards a conclusion from situation A to situation B (the ship is guided by the light thrown by...). 4. <i>Dimensions</i>: It does not possess any negative characteristics. It informs the audiences about the current state of affairs by highlighting the contrast/difference between the first (current) negative state and the second positive state. Further, while it signals towards a conclusion/decision, it also hints at a situation where there may not be a (permanent) conclusion ('seeking <u>some</u> guidance' indicates doubt).

	<p>5. <i>Concepts</i>: Being stuck in uncharted waters is inherently undesirable that calls for light which is favourable or desirable. The metaphor is situated in the larger background of lack of certainty or sureness. It stresses on this aspect by using antithetical, opposing language.</p>
<p>Step 3: Text-Immanent Metaphor Analysis</p> <p>Understanding the metaphor in its context, with detailed attention to the authors' background.</p>	<ol style="list-style-type: none"> 1. <i>Individual Comprehension</i>: The authors (Justice Katju and Justice Misra) have maintained that judicial activism may be desirable but only on a few occasions. The use of 'a ship in an uncharted sea' can then be seen to imply that the SC does not have sufficient knowledge or experience because euthanasia is primarily a public policy issue that must be decided by the parliament. It is for this reason that it depends on foreign legislations, foreign judgements and views of the case counsels. 2. <i>Individual Background</i>: Justice Katju comes from a family background of lawyers and politicians, with strong associations with the Indian National Congress (major political party). He is an outspoken, active public personality (through social media and blogging⁹³) and has attracted attention with his bold and controversial statements and judgements. Justice Misra is known for her landmark judgements on women's rights and security. She entered her profession at a time when it was uncommon for women to be lawyers. Both of them together have given highly contended judgements on fake encounters by the police, rights of sex workers, honour killings, dowry murders etc. In many of these cases, they have awarded death penalty to the accused. This, in a way, gives both judges credibility to take this issue up even though it could be dismissed after preliminary hearing. 3. <i>Individual Path</i>: Both judges have been outspoken about the Indian society's 'corrupt' practices and resultant violations of social justice. The metaphor 'seeking some guidance by the light thrown by' may then be indicative of their confidence in foreign cases, experiences of advanced countries (it relies mostly on the cases from the UK and the US) and opinions of the AC. In this sense, the metaphor is in keeping with the authors' views and thoughts. 4. <i>Self-concept</i>: It is used consciously, perhaps to emphasise their role in the decision-making process. They can then be seen as temporary captains of the ship who must take a decision that stays in place till the parliament acts on this issue.

II. "...it is the KEM hospital staff, who have been amazingly caring for her day and night for so many long years, who really are her next friends and not Ms. Pinky Virani who has only visited her on few occasions and written a book on her."

<p>Step 1: Metaphor Identification and Selection</p>	<ol style="list-style-type: none"> 1. <i>Repetition</i>: The metaphor is repeated four times in the whole text to emphasise the role played by the KEM staff in taking care of Aruna. The KEM hospital is an important actor in the judgement. 2. <i>Relatedness</i>: It is related to the main theme of the text. It uses the metaphor to question the <i>locus standi</i> of Pinky Virani who filed the petition. The SC uses this to explain KEM staff's vital contribution in taking care of Aruna in a nutshell. 3. <i>Emotion</i>: The hospital staff took care of Aruna for 38 years. The metaphor is used to express their familial attachment, dedication, commitment and benevolence.
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⁹³ His blogspot is available at: <http://justicekatju.blogspot.nl/>

<p>Step 2: General Metaphor Analysis</p>	<ol style="list-style-type: none"> 1. <i>Comparisons</i>: Other metaphors like ‘round the clock’, ‘timeless’ can be used to communicate the same idea. However, it can also be used to imply a sharp contrast between two or more things. For example, the sentence ‘their two sons are like night and day’ suggests the dissimilarity between the two sons. 2. <i>Associations</i>: It can be associated with hard-work, permanence, perseverance, honesty, togetherness, sacrifice etc. On the other hand, it can also be associated with incompatibility, worlds apart or poles apart (also metaphors) etc. 3. <i>Function, Role or Target</i>: It signals characteristic features of individuals or processes. The metaphor’s role is to accentuate or highlight these particular characteristics. 4. <i>Dimensions</i>: The metaphor is essentially neutral, it is neither negative nor positive. But it strengthens the favourable, unfavourable or contrasting nature of attributes that it attaches itself to. Additionally, it can be used as a tool of persuasion (potential characteristic) because opposite words like ‘day’ and ‘night’ add weight or force to it. 5. <i>Concepts</i>: The metaphor can be situated in a larger picture that may entail extended periods of time (weeks, months or years). For instance, the sentence ‘she worked day and night to give her daughter a good schooling’ implies that she worked for 10-12 years till her daughter finished school.
<p>Step 3: Text-Immanent Metaphor Analysis</p>	<ol style="list-style-type: none"> 1. <i>Individual Comprehension</i>: The authors understand the metaphor to mean ‘all the time’ or ‘uninterrupted’. They declare the hospital staff as Aruna’s next friend early on in the judgement in paragraph 13. It is used: 1) as praise language and 2) as a comparison with Pinky Virani’s role in Aruna’s life. 2. <i>Individual background</i>: Similar to above, the authors’ background and their position (at that time) as strong SC judges gives them the authority to dismiss Virani as next friend. Moreover, since both Katju and Misra have worked with each other on several occasions it gives them a sense of certitude and reassurance, for there are fewer chances of the Bench disagreeing with each other on such decisive conclusions. 3. <i>Intention</i>: The final decision to dismiss the petition filed by Virani on behalf of Aruna draws from the premise that KEM staff worked ‘day and night’ to take care of her and therefore only they can take a decision to withdraw her life support system. This metaphor is used consciously (from the beginning). Further, this can also be connected to the views of the judges on judicial activism and restraint, which perhaps prompted them to take such an ‘undecided’ decision. 4. <i>Self-concept</i>: The position of the SC judges (as captains of the ship) and their role in dealing with sensitive issues in the past (mentioned in 3.1) gives them the responsibility as well as credibility to recognize the appropriate next friend of Aruna, so that justice is served. The metaphor is targeted towards Pinky Virani. It describes the hospital staff’s commitment and attachment as comparable to a familial bond (includes spouse, parents or siblings). Through this, the judges perhaps also attempt to refer to their continuous efforts as parens patriae to safeguard and strengthen people’s rights and ensure justice. Moreover, this notion or idea of family may be specific to Indian society and its culture, especially true in the context of ageing, terminal illness, euthanasia etc. It may vary with other countries, particularly in the West.