

IN THE SUPREME COURT OF INDIA
(Civil Original Writ Jurisdiction)
WRIT PETITION (CIVIL) NO. 215 OF 2005

IN THE MATTER OF:

COMMON CAUSE (A Regd. Society)

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENTS

With

I.A. No. _____ of 2005 (Application for Interim Directions)

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BRIEF SYNOPSIS & LIST OF DATES

The Petitioner which is a non government, non profit making organisation is filing the instant Writ Petition under Article 32 of the Constitution of India in public interest to bring to the notice of this Hon'ble Court the serious problem of violation of fundamental right to life, liberty, privacy and the right to die with dignity of the people of this country guaranteed to them under Article 21 of the Constitution of India. It is submitted that the citizens who are suffering from chronic diseases and/or are at the end of their natural life span and are likely go into a state of terminal illness or permanent vegetative state are deprived of their rights to refuse cruel and unwanted medical treatment, like feeding through hydration tubes, being kept on ventilator and other life supporting machines in order to artificially prolong their natural life span. This sometimes leads to extension of pain and agony both physical and mental which they desperately seek to end by making an informed choice and clearly expressing their wishes in advance, (called a living will) in the event of they going into a state when it will not be possible for them to express their wishes. This Hon'ble Court has observed in the case of ***Gian Kaur vs. State of Punjab and in other connected matters, (1996) 2 SCC 648*** that right to die with dignity is a part of right to live with dignity. This Hon'ble Court has observed

"A question may arise, in the context of a dying man who is terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the right to die with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not the cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced."

This Hon'ble Court has held that right to life does not mean a mere animal existence of a human being. It has been held that right to life will mean right to live with dignity with basic amenities of life like food, shelter, health etc. (***Kindly See Francis Coralie Mullin vs. Administrator, Union Territory of Delhi reported in (1981) 1 SCC 608***)

It is a common law right of the people, of any civilized country, to refuse unwanted medical treatment and no person can force him/her to take any medical treatment which the person does not desire to continue with. It is submitted that to initiate a medical treatment to a person who has reached at an

Even the right to privacy which has also been held to be a part of right to life is being violated as the people are not being given any right to make an informed choice and a personal decision about withholding or withdrawing life sustaining medical treatment. (*Kindly See Kharak Singh vs. State of U.P., (1964) 1 SCR 332, Govind vs. State of Madhya Pradesh, (1975) 2 SCC 148 and Peoples Union for Civil Liberties vs. Union of India, (1997) 1 SCC 301 on Right to Privacy*).

In the present regime of laws even clearly expressed wishes of such patients to be permitted to die with dignity are not respected and it is difficult for the medical practitioner to take a decision in accordance with these wishes, due to the fear of facing penal consequences. This situation is depriving the citizens of the country of a precious fundamental right guaranteed to them by the Constitution, namely the right to die with dignity, which is implicit in Article 21 of the Constitution.

21.3.1996 This Hon'ble Court pronounced a judgment in the case of Gian Kaur vs. State of Punjab reported in (1996) 2 SCC 648 declaring Section 306 and 309 IPC to be intra vires to the Constitution of India and holding that the right to life does not include right to die. However, this Hon'ble Court in the judgment observed in Para 24 and 25 that though there can be no right to die per se and it cannot be a part of right to life however, the 'right to die with dignity' can be a part of right to live with dignity.

19.6.2002
&

25.6.2002 The Petitioner organization wrote letters to the Government of India in the Ministry of Health & Family Welfare and the Ministry of Law, Justice and Company Affairs, and at the same the petitioner referred this matter to the State Governments, taking into account the facts that hospitals come within the purview of State Governments otherwise medical functioning lies within the jurisdiction of State Governments as well as Government of India. In these communications the petitioner had emphasized the need of avoidance of harrowing pain and distress attendant on

of age, the problems connected with treatment of elderlies have multiplied, particularly when an elderly faces illness of serious nature and has to be taken to hospital for treatment. It is submitted that no reply to these communications was received.

18.12.2004 That on 18th December 2004, newspapers prominently depicted in their columns the serious problem of a young man of 25 years, Venkatesh in Hyderabad, who suffered from a form of muscular dystrophy, marked by progressive muscular weakness which was stated in his case to be an incurable hereditary disease which affects the muscles. The young man, a previous Chess Champion, submitted a plea to High Court of Andhra Pradesh to be allowed to donate his organs before his demise. The plea was turned down. The disease that he was suffering from is stated to have been incurable, and soon thereafter the young man passed away. That the death of Venkatesh in such circumstances, when he was suffering from an incurable disease, and had sought permission to donate his organs before death, got highlighted in the media, and this matter has become the subject of arguments whether euthanasia would not be an appropriate approach in cases of incurable patients; demand has started being voiced that this matter needs to be taken up by the Government for passing suitable legislation on the lines of "Patients Self-Determination Act" as in U.S.A., or approving the alternative of legalizing Euthanasia as has been done in certain countries including, Belgium, Netherland and in the American State of Oregon.

In these circumstances the petitioner who has always fought for the cause of people had no choice but to approach this Hon'ble Court for suitable directions to

his suffering. It will be worth mentioning that various countries across the globe have recognized these rights of their citizens and though being still skeptical about legalizing euthanasia has however, enacted suitable legislations enabling the people to issue written advance directives in any form including Living Wills so that their wishes as contained in the document/s so executed can be given effect to if they happen to go in a state when it will not be possible to ascertain their wishes. It is submitted that such laws apart from giving right to make a choice about their quality of life and to determine it while living with dignity (right to die with dignity) also provides immunity to the medical practitioners from being prosecuted under various provisions of penal laws applicable to given set of circumstances thus enabling them to work and practice medicine in fearless environment. This is a very important part of their right to practice any profession guaranteed to them under Article 19 of the Constitution.

That the Petitioner is thus praying to this Hon'ble Court to declare 'right to die with dignity' (not 'right to die' per se) as a fundamental right of the people of this country enshrined in Article 21 of the Constitution. The Petitioner is further seeking direction from this Hon'ble Court, directing the Respondents, to adopt suitable procedures, in consultation with State Governments where necessary, to ensure that persons of deteriorated health or terminally ill should be able to execute a document titled "MY LIVING WILL & ATTORNEY AUTHORISATION" which can be presented to hospital for appropriate action in event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executant or in the alternative, issue appropriate guidelines to this effect, as adoption of such procedure or guidelines will ensure that the fundamental rights of such persons as guaranteed to them under Article 21 of the Constitution of India are not infringed or violated in any manner.

25.4.2005 Hence the instant writ petition in public interest.

IN THE SUPREME COURT OF INDIA**ORIGINAL CIVIL JURISDICTION**

CIVIL WRIT PETITION NO. _____ OF 2005

IN THE MATTER OF:

COMMON CAUSE
 (A Registered Society)
 THROUGH ITS DIRECTOR
 SH. H.D. SHOURIE
 A-31, WEST END
 NEW DELHI 110 021

...PETITIONER

VERSUS

1. UNION OF INDIA

(a) THROUGH SECRETARY
 MINISTRY OF HEALTH & FAMILY WELFARE
 DEPARTMENT OF HEALTH
 NIRMAN BHAWAN
 NEW DELHI 110 011

(b) THROUGH SECRETARY
 MINISTRY OF LAW, JUSTICE &
 COMPANY AFFAIRS
 DEPARTMENT OF LAW
 SHASTRI BHAWAN
 DR. RAJENDRA PRASAD ROAD
 NEW DELHI 110 001

...RESPONDENT

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

To

The Hon'ble Chief Justice of India
 And his companion Justices of the Supreme Court of India

The humble Petition of the Petitioner above named..

Most respectfully sheweth:

INTRODUCTION

1. The instant Writ Petition is being filed under Article 32 of the Constitution of India in public interest to bring to the notice of this Hon'ble Court the serious problem of violation of fundamental right to life, liberty, privacy and the right to die with dignity of the people of this country guaranteed to them under Article 21 of the Constitution of India. It is submitted that the

unwanted medical treatment, like feeding through hydration tubes, being kept on ventilator and other life supporting machines in order to artificially prolong their natural life span. This sometimes leads to extension of pain and agony both physical and mental which they desperately seek to end by making an informed choice and clearly expressing their wishes in advance, (called a living will) in the event of they going into a state when it will not be possible for them to express their wishes. In the present regime of laws even clearly expressed wishes of such patients to be permitted to die with dignity are not respected and it is difficult for the medical practitioner to take a decision in accordance with these wishes, due to the fear of facing penal consequences. This situation is depriving the citizens of the country of a precious fundamental right guaranteed to them by the Constitution, namely the right to die with dignity, which is implicit in Article 21 of the Constitution.

2. That the problem/issue is a persisting one for want of desired laws, rules and/or guidelines and also due to certain penal provisions which makes it virtually illegal to respect the wishes of a person in a situation where he wishes to be relieved of his suffering. It will be worth mentioning that various countries across the globe have recognized these rights of their citizens and though being still skeptical about legalizing euthanasia has however, enacted suitable legislations enabling the people to issue written advance directives in any form including Living Wills so that their wishes as contained in the document/s so executed can be given effect to if they happen to go in a state when it will not be possible to ascertain their wishes. It is submitted that such laws apart from giving right to make a choice about their quality of life and to determine it while living with dignity (right to die with dignity) also provides immunity to the medical

their right to practice any profession guaranteed to them under Article 19 of the Constitution.

3. That another facet of the series of rights which are available to the people is the right of the people who are young and are in a position to revive from their present suffering to get timely medical care. The scarcity of good medical treatment all over the country is still a serious problem due to various reasons. The life saving facilities and intensive emergency units are still only available only in very few State owned hospitals and medical institutions. It is most respectfully submitted that by keeping the intensive care units and state of the art facilities and medical supports engaged for people whose life is already ebbing out and the natural process of dying has already begun, and that too against the wishes of their relatives or against the expert medical opinion of the doctors results in depriving the other needy people from requisite treatment which if provided to them in time can save their lives is a serious violation of the fundamental rights of the people under Article 21 of the Constitution.
4. That the Petitioner is thus praying to this Hon'ble Court to declare 'right to die with dignity' (not 'right to die' per se) as a fundamental right of the people of this country enshrined in Article 21 of the Constitution. The Petitioner is further seeking direction from this Hon'ble Court, directing the Respondents, to adopt suitable procedures, in consultation with State Governments where necessary, to ensure that persons of deteriorated health or terminally ill should be able to execute a document titled "MY LIVING WILL & ATTORNEY AUTHORISATION" which can be presented to hospital for appropriate action in event of the executant being admitted to the hospital with serious illness which may threaten termination of life of

fundamental rights of such persons as guaranteed to them under Article 21 of the Constitution of India are not infringed or violated in any manner.

FACTS ABOUT THE PETITIONER:

5. That the Petitioner is a Society duly registered under the Societies Registration Act, 1860, and is engaged in taking up various common problems of the people for securing redressal thereof. The Petitioner Society has also brought to Court various constitutional problems which includes the prevention of corruption, accidents and deaths occurring due to road accidents etc. The Petitioner has an established locus standi and its capacity as a bona fide public interest organization for taking up matters of general public importance. The Petitioner is submitting the present public interest petition for consideration of the Hon'ble Court.

FACTS RELEVANT TO THE INSTANT PETITION:

6. Before dealing with the merits and facts of the case the petitioner would like to explain the various terms which are being used in the instant petition or the ready reference of this Hon'ble Court. The definition of the terms as being evolved by the courts or experts or reputed journals or statutes are mentioned below:

- (a) Euthanasia or Mercy Killing: *"Euthanasia is a compound of two Greek words – eu and thanatos meaning, literally, 'a good death'. Today, 'euthanasia' is generally understood to mean the bringing about of good death – 'mercy killing,' where one person, A, ends the life of another person, B, for the sake of B".*
(Helga Kuhse PhD – Director, Centre for Bioethics, Monash University, Clayton, Victoria)

- (b) Terminal condition: *"A condition caused by injury, disease, or*

provision of life prolonging procedures" (**Indiana Code 16-36-4-5**)

- (c) Persistent Vegetative State (PVS): *"Vegetative state describes a body which is functioning entirely in terms of its internal controls. It maintains temperature. It maintains heart beat and pulmonary ventilation. It maintains digestive activity. It maintains reflex activity of muscles and nerves for low conditioned responses. But there is no behavioral evidence of either self-awareness or awareness of the surroundings in a learned manner"* (**Dr. Fred Plum, Source: 497 US 261 Cruzan vs. Director, Missouri Department of Health**)
- (d) Living Will : *"A document in which person states his/her desire to have or not to have extraordinary life prolonging measures used when recovery is not possible from his/her terminal condition."* (Source : State of Indiana, Definitions contained in guidelines)
- (e) Attempt to commit suicide: *'Whoever attempts to commit suicide and does any act of its commission, all such offences shall be punished with imprisonment for a term which may extend to one year or with fine, or with both.'* (**Section 309, Indian Penal Code**)
- (f) Abetment of Suicide: *'If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either prescription which may extend to 10 years; and shall also be liable to fine.'* (**Section 306, Indian Penal Code**).

Constitution bench judgment of this Hon'ble Court in the case of *Gian Kaur vs. State of Punjab and in other connected matters*, (1996) 2 SCC 648. The endeavor of the Petitioner in the instant petition is to seek guidelines from this Hon'ble Court whereby the people who are diagnosed of suffering from terminal diseases or ailments can execute Living Will or give directives in advance or otherwise to his/her attorney/executor to act in a specific manner in the event he/she goes into persistent vegetative state or coma owing to that illness or due to some other reason.

8. It is further submitted that the need of such guidelines are being felt necessary as the people who are suffering from incurable painful disease are at present left on the mercy of the doctors treating them and are not in a position to take a decision and issue instructions about their continuing or discontinuing the medication and/or treatment which includes life supports. Even the medical practitioners in the country are fearful of withdrawing life supports from such patients as they can be charged for manslaughter or even abetting suicide if they act on the wishes of the patient on oral instructions received from the patient's relatives in this regard, especially in the absence of any written instructions from the patient himself.
9. It is submitted that Article 21 of the Constitution guarantees Right to Life & Liberty as the fundamental right of persons living in India. This Hon'ble Court has interpreted the fundamental right to life in many cases and has broadened its scope by bringing right to privacy, right to live with dignity which will also include in it the right to die with dignity, right to shelter, right to food etc. in its fold. The Right to Liberty is a well recognized fundamental and human right which is also guaranteed to the people of

Constitution bench judgment of this Hon'ble Court in the case of ***Gian Kaur vs. State of Punjab and in other connected matters, (1996) 2 SCC 648***. The endeavor of the Petitioner in the instant petition is to seek guidelines from this Hon'ble Court whereby the people who are diagnosed of suffering from terminal diseases or ailments can execute Living Will or give directives in advance or otherwise to his/her attorney/executor to act in a specific manner in the event he/she goes into persistent vegetative state or coma owing to that illness or due to some other reason.

8. It is further submitted that the need of such guidelines are being felt necessary as the people who are suffering from incurable painful disease are at present left on the mercy of the doctors treating them and are not in a position to take a decision and issue instructions about their continuing or discontinuing the medication and/or treatment which includes life supports. Even the medical practitioners in the country are fearful of withdrawing life supports from such patients as they can be charged for manslaughter or even abetting suicide if they act on the wishes of the patient on oral instructions received from the patient's relatives in this regard, especially in the absence of any written instructions from the patient himself.

9. It is submitted that Article 21 of the Constitution guarantees Right to Life & Liberty as the fundamental right of persons living in India. This Hon'ble Court has interpreted the fundamental right to life in many cases and has broadened its scope by bringing right to privacy, right to live with dignity which will also include in it the right to die with dignity, right to shelter, right to food etc. in its fold. The Right to Liberty is a well recognized fundamental and human right which is also guaranteed to the people of

under Article 21 of the constitution cannot be abridged or burdened by any executive action or the rights of the State without following the procedure established by law. The petitioner would like to briefly explain to this Hon'ble Court that how these rights are available to the people of this country which supports the issue, of 'right to die with dignity', raised in the instant petition.

(a) **Right to Life – right to live with dignity – right to die with dignity**

The Right to Life is one of the basic fundamental rights which have been provided to the people of this country in the Constitution. This Hon'ble Court over the years in various cases has enlarged the scope of this right in many facets of life some of which includes shelter, food, health, privacy etc. It is submitted in whatever way this Hon'ble Court has enlarged the scope of the right to life the basis of it has always been the right to live with human dignity. In the case of ***Francis Coralie Mullin vs. Administrator, Union Territory of Delhi reported in (1981) 1 SCC 608*** this Hon'ble Court has held in very clear terms that right to life does not mean a mere animal existence of a human being. This Hon'ble Court has held that right to life will mean right to live with dignity with basic amenities of life like food, shelter, health etc. In view of these judgments and particularly in the light of the observations made by this Hon'ble Court in the case of *Francis Coralie supra*, one fundamental issue which arises is that whether the right to live with dignity, in the context of the issue raised in this petition will include in its fold the 'right to die with dignity' or not. Since, where the ebbing out process of the life has already started or where the person has gone into a persistent vegetative state there is no

such a person can in no way be termed as living a life with dignity and hence the natural corollary emerges that in such a situation the person should have a right to die with dignity. The answer to this question has been subtly answered by the Constitution Bench of this Hon'ble Court in its observations in the case of ***Gian Kaur vs. State of Punjab and in other connected matters***, (1996) 2 SCC 648 while adjudicating on the vires of Section 309 of the Indian Penal Code and also on the issue of declaring Right to Die as a part of the Right to Life. Justice J.S. Verma, as he then was, while speaking for this Hon'ble Court has observed in Para 24 and 25 that

'.....The right to life including the right to live with human dignity would mean the existence of such a right up to the end of natural life. This also includes the right to a dignified life up to the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the right to die with dignity at the end of life is not to be confused or equated with the right to die an unnatural death curtailing the natural span of life.

A question may arise, in the context of a dying man who is terminally ill or in a persistent vegetative state that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the right to die with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not the cases of

The debate even in such cases to permit physician-assisted termination of life is inconclusive.'

The interpretation of the above observation in the judgment will show that though there can be no right to die per se and it cannot be a part of right to life however, the 'right to die with dignity' can be a part of right to live with dignity. The Petitioner, most respectfully submitted, is emphasizing on this 'right to die with dignity' as a part of right to live with dignity which is a part of Right to Life as guaranteed to the people of this country under Article 21 of the Constitution. The life, which is being sustained by the help of artificial life supports just to keep the person alive physiologically in a complete vegetative state cannot be termed as healthy and a dignified life in fact it is worse than the animal existence against which this Hon'ble Court has expressed its strong views. The Petitioner is thus praying to this Hon'ble Court to declare 'right to die with dignity' as a fundamental right enshrined in Right to Life enabling the people of this country to take a decision regarding issuing advance directives in the form of a Living Will or in any other manner so that their wishes are expressly written regarding the way the doctors and relatives of that person should act in the event of he/she going into a state which will render him/her unable to express his/her wishes.

(b) **Right to Liberty**

That right to liberty protected by procedure established by law is another most fundamental right which has been provided to the people by Article 21 of the Constitution. Every person living in India has a right to live a free life without any force, physical or otherwise,

law as held by this Hon'ble Court can also be a reasonable procedure and not an arbitrary or an irrational one. It is a common law right of the people, of any civilized country, to refuse unwanted medical treatment and no person can force him/her to take any medical treatment which the person does not desire to continue with. It is submitted that to initiate a medical treatment to a person who has reached at an end of his life and the process of his/her death has already commenced against the wishes of that person will be violating his/her right to liberty. The right to be free from unwanted life-sustaining medical treatment is a right protected by Article 21. This right should not be misunderstood as a right to abandon the desire for life but should be understood as the choice about death when the person has reached a state when he/she is merely physiologically alive but has no consciousness and no chance of recovery and does not have any cognitive or reflexive ability and their condition is irreversible, permanent, progressive and ongoing. It is submitted that to forcefully keep a person on life sustaining medicines and artificial means to prolong his/her life just because the State has a right to preserve life and believes in the sanctity of life will be a violation of the fundamental right of liberty of person to be free from such medical treatment. It is further submitted that the fundamental rights guaranteed to the people/citizens in the Constitution cannot be abridged or burdened by any obligation of the State or the rights of the State. It will be worth mentioning here that as such at present there is no procedure established by law by which the Respondent can force the person to take medical treatment against his/her wishes and thus the State will be acting in complete derogation of fundamental

(c) **Right to Privacy**

That the right to privacy has been held to be a part of Right to Life by this Hon'ble Court in the cases of *Kharak Singh vs. State of U.P.* reported in (1964) 1 SCR 332, *Govind vs. State of Madhya Pradesh* reported in (1975) 2 SCC 148 and *Peoples Union for Civil Liberties vs. Union of India*, reported in (1997) 1 SCC 301.

That right to privacy can be understood as the personal decision on the matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy. Many decisions of the people like marriage, family relationships, procreation, contraception, education etc. are considered to be personal decisions in law. The privacy right includes the interest in independence in making certain kinds of important decisions. The right to liberty also includes in itself the right to privacy. It is submitted that the right to die with dignity clearly falls within the privacy right. The U.S. Supreme Court in the case of *Cruzan vs. Director, Missouri Department of Health*, 497 U.S. 261 (281) has recognized that the choice between life and death is a deeply personal decision. Every person has a right to take a personal decision about continuing or discontinuing life when the process of their death has already started and they have reached into a irreversible, permanent progressive state where death is inevitable and this right cannot be scuttled by the State. It is submitted that the State cannot supplement the personal decision of a person to refuse unwarranted medical treatment by its own decision of continuing the person on life-sustaining medical treatment prolonging his/her mental and/or physical agony. It is

point of time when he/she reaches into a medical condition which is irreversible, permanent and progressive leading to death then that interest cannot be outweighed by any other interest whether of a third party or of the State in preservation of life. In this context, it is necessary that the people of this country are given a 'right to die with dignity' in the circumstances mentioned above and they are made aware and are entitled to execute a document so that they can effectively make their decisions and give advance directives about the way they should be treated in the event they become incompetent to express their wishes.

10. It is submitted that at present all over the country the elderly, patients, relative of the patients and even the Doctors are facing a continuous dilemma with regard to the legality of their decisions or actions withdrawing life supports from such patients. In this regard one of the recent incidents is worth mentioning. That on 18th December 2004, newspapers prominently depicted in their columns the serious problem of a young man of 25 years, Venkatesh in Hyderabad, who suffered from a form of muscular dystrophy, marked by progressive muscular weakness which was stated in his case to be an incurable hereditary disease which affects the muscles. The young man, a previous Chess Champion, submitted a plea to High Court of Andhra Pradesh to be allowed to donate his organs before his demise. The plea was turned down. The disease that he was suffering from is stated to have been incurable, and soon thereafter the young man passed away.

11. That the death of Venkatesh in such circumstances, when he was suffering from an incurable disease, and had sought permission to donate

being voiced that this matter needs to be taken up by the Government for passing suitable legislation on the lines of "Patients Self-Determination Act" as in U.S.A., or approving the alternative of legalizing Euthanasia as has been done in certain countries including, Belgium, Netherland and in the American State of Oregon. A copy of the news report about Venketesh as published in The Tribune, dated 18.12.2004 as downloaded from the internet is being annexed hereto as **Annexure – P1**.

12. That the Petitioner organization had taken up this matter a couple of years ago and had addressed letters to the Government of India in the Ministry of Health & Family Welfare and the Ministry of Law, Justice and Company Affairs, and at the same the petitioner referred this matter to the State Governments, taking into account the facts that hospitals come within the purview of State Governments otherwise medical functioning lies within the jurisdiction of State Governments as well as Government of India. In these communications the petitioner had emphasized the need of avoidance of harrowing pain and distress attendant on prolongation of dying of a patient in the hospital. It was also emphasized that age of persons all over the world has substantially increased during the last few decades, and along with the increase of age, the problems connected with treatment of elderlies have multiplied, particularly when an elderly faces illness of serious nature and has to be taken to hospital for treatment. It is submitted that no reply to these communications was received. A copy of these letters dated 19.6.2002 and 25.6.2002 addressed to Secretary, Government of India, Ministry of Law, Justice and Company Affairs and Secretary, Ministry of Health and Family Welfare are being annexed hereto as **Annexure – P2(Colly.)**.

even when life is ebbing out and there is no hope of survival and continuance of life. Patients with serious debilitation and unconsciousness, and in vegetative state, totally incurable, continue to be kept alive with the use of all sorts of life supporting equipment, including mechanical respiration, with tubes and wires sticking out and through all orifices of the body. These advancements of modern technology some times create situations where dying process of the patient is unnecessarily prolonged, to the extreme distress and agony of the patient as well as of the near and dear ones. There are some times cases where this situation continues to prevail for 3/4 weeks and even more, and misery of the patient and relatives is severely prolonged.

14. However, the petitioner at the moment is not raising the issue of legalizing Euthanasia which mainly gives the right to the doctor to terminate the life of the patient who is in a persistent vegetative state, though it being practiced discreetly in its passive form in the country. The Petitioner is not even claiming that the Right to Die per se is a part of Right to Life but is claiming the 'Right to die with dignity' as a part of Right to Live with dignity as has been observed by this Hon'ble Court in the judgment dealing with the issue of Right to die per se.

15. It will be worth analyzing the judgment of this hon'ble Court passed in Gian Kaur supra before dealing with the contentions raised by the petitioner in support of this petition. That the decision of this Hon'ble Court contained in brief the following verdicts:

- a. Section 309 of Indian Penal Code – punishment for attempting to commit suicide was held to be not violative of Art. 21 of the Constitution as the "Right to Life" guaranteed under Art. 21 does

prescribing any minimum punishment and without making sentence of imprisonment compulsory;

- b. Section 306 of Indian Penal Code for abetment of suicide was held also to be not unconstitutional. Abetment of suicide and attempt to commit suicide are two distinct and separate offences, and Section 306 would be operative even in the absence of Section 309;
- c. Art. 21 of the Constitution of India – “Right to Life” does not include “Right to Die”. It provides for protection of life, a right to live with dignity up to natural death, but does not comprehend extinction of life which amounts to unnatural death. Right under Art. 21 cannot be construed to include the positive aspect of right to die. Freedom guaranteed under Art. 19 is of positive nature and includes negative aspect also as the same requires no positive or overt act to be done (e.g. freedom of speech includes freedom not to speak etc.) but that analogy cannot be applicable to Art. 21.
- d. Art. 21 of the Constitution of India, comprising Right to Live with human dignity does not include right to terminate natural life. A dying man who is terminally ill or in a persistent vegetative stage may have right to die with dignity as a part of right to live with dignity but that cannot lend support to the view that Art. 21 includes right to curtail natural span of life, Euthanasia plea based on it is not relevant.
- e. Desirability of deleting the provision of Section 309 from the statute on the basis of recommendation of Law Commission is a factor for legislature to consider and not for Court for declaring the provision unconstitutional. Challenge to constitutionality of the provision has to be considered with reference to the relevant provisions of the Constitution.

- (i) It has been emphasized that there is no similarity in the nature of other rights under Art. 19 to provide a comparable basis to hold that the "right to life" also includes the "right to die".
- (ii) The termination of life in case of a dying man who is terminally ill or in a persistent vegetative state may fall within the ambit of the "right to die" with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only of accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician-assisted termination of life is inconclusive, since the "right to die" is not included in the "right to life".
- (iii) Under Art. 21, for the same reason, "right to live with human dignity" cannot be construed to include within its ambit the right to terminate natural life, at least before the commencement of the natural process of certain death.

16. In view of the above discussion of facts and law the petitioner would like to put forth its contentions, which in no way seeks to upset the above analyzed judgment of this Hon'ble Court. These contentions will emphasize on the importance of rights available to people vis a vis the arguments in favor of abstract life and right of the State to preserve life. These are as follows:

(a) **Matter of Choice or Submission**

The core issue which revolves around this whole subject of advance directives and provision of executing Living Wills is if the person is in a medical state where there are no chances of

no choice but to submit himself to the doctors who might put him on the life supports just to prolong his life. It is submitted that to submit to death while using life-sustaining treatment and prolonging the mental and physical pain and agony of the patient and/or his/her relatives and to be able to make a choice in this regard are two different things. The matter of choice is an important personal decision of the patient to use or not to use the life-sustaining treatment. The petitioner is not advocating that each and every person should be compulsorily required to execute the Living Will or issue advance directives. The endeavor of the petitioner is only to seek a 'choice' for the people which is not available at present and they are left to the mercy of doctors who to save themselves from any penal consequences half heartedly, despite knowing that the death is inevitable continue administering the treatment which the person might not have wanted to continue with. It is most respectfully submitted that the freeness/freedom to execute or not to execute the Living Will or issue advance directives is paramount. The persons will also be free to issue advance directives both in a positive and negative manner, meaning thereby that it is not that a person is necessarily required to issue directive that the life-sustaining treatment should not be given to him in the event of he/she going into persistent vegetative state or in an irreversible state. The person can also issue directives as to all the possible treatment which should be given to him when he is not able express his/her wishes.

(b) Fundamental rights vs. State rights

It is a very well settled position of our constitutional jurisprudence

quashed. As mentioned above in detail the fundamental rights of the people involved with regard to the issue in hand are Right to Live with dignity which includes right to die with dignity, right to liberty and right to privacy. All these rights come under the purview of Article 21 of the Constitution which guarantees Freedom of Life and Liberty to all persons in the country which is protected by procedure established by law clause. The only right of the State which comes in the way of the right to die with dignity being granted to citizens is the right to preserve life. It is submitted that this right of the State cannot burden the fundamental rights of the people. Moreover, the right of the State to preserve life is not absolute, without regard to the quality of life which will be discussed by the Petitioner in the next head.

(c) **Sanctity of Life vs. Quality of Life**

The sanctity of life is no doubt important in any civilized society but more important is the quality of life. The State cannot only endeavour to preserve life and sanctity of life as its obligation without regard to quality of life. This Hon'ble Court has held in the case of *Francis Coralie supra* that the term 'Life' does not mean a mere animal existence. It includes in its fold the enjoyment of basic amenities like food, shelter, health etc which makes the living happy and meaningful. The life in which a person cannot enjoy these basic amenities cannot even respond to his/her near ones and cannot participate socially is a life which can be termed even worse than the animal existence. The State cannot claim the sanctity of life and preservation of life as their most important rights while totally disregarding the fact that how a person is supposed to lead his life in

interest of person violates the fundamental rights of the people and cannot be sustained.

INTERNATIONAL LAWS AND PERSPECTIVE

17. That though the countries around the world are still skeptical about legalizing Euthanasia or mercy killing but some of them like Netherlands, Belgium, Columbia, Switzerland and State of Oregon in USA have enacted laws legalizing Euthanasia or assisted suicide. Recently, France has also passed a passive Euthanasia law in the country. Since the petitioner, as mentioned above, is not raising the issue of Euthanasia at the moment these laws are not being discussed here. However, it will be worth stating that the enactment of these laws shows the overall concern about the issue and confirms the necessity of these laws in the present context where the science and technology has advanced so much that it has become possible to keep the person physiologically alive by the help of life-sustaining machines.

18. That various countries however have recognized the concept of Living Wills. These Living Wills relates of instructions of people about their possible medical treatment, in case there comes a time then they are no longer capable of making decisions or of communicating them. The countries which have recognized the concept of Living Wills or advance directives are USA – The Patient Self-determination Act 1990, Australia – The Consent to Medical Treatment and Palliative Care Act, 1995, Denmark –Section 17 of the Law No. 482 of 1st July 1998 on Patients' Rights, Singapore and Canada.

19. In USA apart from the Federal Law – The Patient Self-determination Act,

'Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining treatment in a terminal condition or permanent unconscious condition.'

Wash.Rev.Code 70.122.030

'Any physician who participates in good faith in the withholding or withdrawal of life-sustaining treatments in accordance with such a directive is immune from civil or criminal or professional liability.'

Wash.Rev.Code 70.122.051

The State of Indiana, has also framed guidelines along with the forms of living will or advance directives under the Patient Self Determination Act which are annexed to the petition as **Annexure – P3** for the perusal of this Hon'ble Court.

20. It will be worth mentioning here that in the absence of these written advance directives, the only recourse the relatives of the patient are left with is to approach the appropriate court for orders granting removal of life-sustaining medical support. This system has almost always proven to be very time consuming apart from being very expensive. The suffering patient may or may not have time for such a time consuming legal battle. The suffering patient can possibly also be in a state of acute physical pain and agony and requires immediate relief. In this regard one of the very recent examples of a woman called Theresa Marie Schiavo (popularly known as Terri Schiavo) will be apt to mention here. On February 25, 1990 Terri Schiavo suffered a cardiac arrest, apparently due to imbalance of potassium in her system. She never regained consciousness and till her death remained comatose and was being nourished and hydrated via a feeding tube in a nursing home. As Terri Schiavo was a young woman she had not left any Living Will or advance directives so as to provide any

of the life support as she being in irreversible persistent vegetative state and on the basis that it was her wishes expressed to him orally that she would not like to continue in such a way. The Circuit Court of Florida granted the order of removal of hydration tube on 11th February 2000 after relying on all the evidence produced before him. However, the parents of Terri Schiavo filed an appeal in the District court of Appeal, Florida which was dismissed after four years and the order of the Circuit court was upheld. The strong opposition of the order even resulted in the enacting of a bill giving special authority to the Governor of Florida to issue one time stay from withholding the hydration and nutrition in certain circumstances and even later the U.S. Congress passing the law to overturn the judgment. However, the verdict of the court prevailed and Terri Schiavo died in March 2005 after almost 16 years of suffering after she was admitted in the nursing home and seven years after the petition was filed. This example reinforces the need of the clear guidelines on the subject of Living Will in the absence of law in this regard, so that the courts are not required to perform such an arduous task and the patient may also not suffer for a long time. A copy of the judgment of the Circuit Court of Florida dated 11.2.2000 as downloaded from the internet is being filed as **Annexure – P4.**

21. That after taking into account the problems which have so far been encountered and are presently also being encountered in our country, and considering the steps which have been taken in other countries, including those where euthanasia has been recognized as law and an appropriate step for termination of life in circumstances of imminence of death, the Petitioner submits that in our country a law of the nature of "Patient Autonomy & Self-determination Act", patterned on the law prevalent in

entitled "Patient Autonomy & Self-determination Act", the Petitioner submits a draft, entitling it "Patient's Self-determination Act", for consideration of the Hon'ble Court. Draft of document entitled "My living will & Attorney Authorization" suggested or adoption in India is placed below. However, the above is being submitted for the consideration of the Central Government and the petitioner is not praying for a direction from this Hon'ble Court directing the Union of India to enact any law. The prayer of the Petitioner in the present writ petition is confined only to establish a procedure and issuance of certain guidelines for the Hospitals and Medical institutions. These guidelines inter alia can be on the lines of the Patient Self Determination Act, 1990 of the USA which will allow the persons who are terminally ill to make their living will or to give advance directives, if they wish to, before they might go into an irreversible state of coma or into the persistent vegetative state.

22. That following points need to be emphasized in relation to the execution of the document entitled "My Living Will & Attorney Authorization".

- (i) It should not be made necessary to execute it on a Stamp Paper.
- (ii) Two witnesses who sign the "Declaration" of document of "Living Will" can also be the signatories as authorized attorneys. This implies that only two persons are required for the purpose. They can be relatives provided of course none of them is likely to derive benefits of the property of the person signing "Living Will".
- (iii) Taking into account the problems that may be encountered at the time of crisis of termination of life it has been considered appropriate to include a clause in the document

to express wishes on behalf of executant in regard to the requirements mentioned in the documents.

- (iv) At least three photocopies of this document should be prepared. The relatives should know that it has been executed and where it is kept. If and when an executant is taken to hospital or put under the medical care of a physician a copy of the document should be supplied to the hospital/physician so that they may be made aware of the wishes of the patient.
- (v) On the admission of seriously ill patient in the hospital and on submission of his document to the hospital authorities, the Head of the Hospital shall immediately set up a group of three doctors of the hospital, dealing with different fields of specialization of medical treatment, to examine the patient, before his life terminates.

A copy of the draft prepared for Patient Self Determination Act to be considered by the Union of India is being annexed hereto as **Annexure – P5**.

23. That at this stage the Petitioner seeks to also invite attention to the article which appeared in the Weekly magazine "India Today" dated 15th April 2002. This article covers various aspects of the problem of euthanasia and the views expressed by various courts in India. A copy of this article titled 'The Last Right' as appeared in 'India Today' is being annexed hereto as **Annexure – P6**.

24. That the Petitioner Society has not filed any other Petition in this Hon'ble Court or in any other Courts to seek the same or similar relief.

26. That the Petitioner is submitting the instant petition before this Hon'ble Court on the following grounds among other being without prejudice to each other:

GROUNDS

A. Because the right to die with dignity is a part of right to live with dignity which is implicit in Article 21 of the Constitution. This Hon'ble Court in the case of Francis Coralie *supra* has held that right to life does not mean a mere animal existence of a human being. This Hon'ble Court has held that right to life will mean right to live with dignity with basic amenities of life like food, shelter, health etc. Further this Hon'ble Court has observed in the case of Gian Kaur *supra* in Para 24 and 25 (as quoted above in Para 9-a) that though there can be no right to die *per se* and it cannot be a part of right to life however, the 'right to die with dignity' can be a part of right to live with dignity. The existence of persons suffering from incurable ailments who have reached into a state of permanent unconsciousness or persistent vegetative state can in no way be termed as living a life with dignity and hence they should have a right to express their wishes regarding withholding or withdrawing of life support treatment in the case they reach such state so as to enable them to die with dignity. The absence of such a legal procedure and the action of the state of not recognizing this right is violative of Article 21 of the Constitution.

B. Because the people has a legitimate liberty interest in refusing to be administered with unwanted medical treatment, including life supports to prolong and/or sustain their life when the process of dying has begun against their wishes. It is a common law right of the people, of

medical treatment to a person who has reached at an end of his life and the process of his/her death has already commenced against the wishes of that person will be violating his/her right to liberty. The right to be free from unwanted life-sustaining medical treatment is a right protected by Article 21. The non-availability of a procedure by which the people can express their wishes in advance as to the kind of medical treatment they would like to be administered with or regarding withholding or withdrawing of the medical treatment which may only prolong their misery when they will be in a state when they will not be in a position to express their wishes is clearly derogatory to the fundamental right of liberty of people as enshrined in our Constitution.

- C. Because this Hon'ble Court has held that the right to privacy as a part of Right to Life in the cases of *Kharak Singh vs. State of U.P.*, *supra* *Govind vs. State of Madhya Pradesh*, *supra* and *Peoples Union for Civil Liberties vs. Union of India*, *supra*. That right to privacy is a personal decision of a person on the matters involving the most intimate and personal choices which he/she may make in a lifetime, choices central to personal dignity and autonomy. Many decisions of the people like marriage, family relationships, procreation, contraception, education etc. are considered to be personal decisions in law. The privacy right includes the interest in independence in making certain kinds of important decisions. The right to liberty also includes in itself the right to privacy. It is submitted that the right to die with dignity clearly falls within the privacy right. The choice between life and death has been recognized to be a deeply personal decision. Every person has a right to take a personal decision about continuing or discontinuing life when the process of their death has already

can be defined by reference to his/her own interests and if the personal interest or choice of the person is to discontinue all medical treatments at a point of time when he/she reaches into a medical condition which is irreversible, permanent and progressive leading to death then that interest cannot be outweighed by any other interest whether of a third party or of the State in preservation of life. The people cannot be compelled to suffer the agony and pain due to their illness by sustaining their life by artificial means when it has been medically established that they cannot be cured from the ailment they are suffering. It is the right of the people to make an individual decision and issuing directive or authorization to the persons of their choice to take a decision on their behalf to forego life-prolonging measures when they are no longer able to take that decision on their own and are in persistent vegetative state.

- D. Because it has also been held by this Hon'ble Court that timely medical treatment to people is also a part of right to life. It is important that people who are young and are in a position to revive from their present suffering get timely medical care. The scarcity of good medical treatment all over the country is still a serious problem due to various reasons. The life saving facilities and intensive emergency units are still only available only in very few State owned hospitals and medical institutions. It is most respectfully submitted that by keeping the intensive care units and state of the art facilities and medical supports engaged for people whose life is already ebbing out and the natural process of dying has already begun, and that too against the wishes of their relatives or against the expert medical opinion of the doctors results in depriving the other needy people from requisite treatment

- c) Appoint an expert committee of experts including doctors, social scientists and lawyers to study into the aspect of issuing guidelines as to the Living Wills;
- d) Pass such other and further order/s as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case.

PETITIONER

Drawn on 18.04.2005
Drawn by: Vishal Gupta, Adv.

THROUGH : PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONER

Filed on : 25.04.2005
Place : New Delhi

IN THE SUPREME COURT OF INDIA
(Civil Original Writ Jurisdiction)

I.A. _____ OF 2005

IN

WRIT PETITION (CIVIL) NO. _____ OF 2005

IN THE MATTER OF:

COMMON CAUSE (A Regd. Society)

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT

APPLICATION FOR INTERIM DIRECTIONS

To

The Chief Justice of India

And His Companion judges of the Supreme Court of India

Most Respectfully Showeth:

1. The Petitioner has filed the accompanying writ petition under Article 32 of the Constitution of India in public interest bringing to the notice of this Hon'ble Court the serious problem of violation of fundamental right to life, liberty, privacy and the right to die with dignity of the people of this country guaranteed to them under Article 21 of the Constitution of India. It is submitted that the citizens who are suffering from chronic diseases and/or are at the end of their natural life span and are likely go into a state of terminal illness or permanent vegetative state are deprived of their rights to refuse cruel and unwanted medical treatment, like feeding through hydration tubes, being kept on ventilator and other life supporting machines in order to artificially prolong their natural life span. This sometimes leads to extension of pain and agony both physical and mental which they desperately seek to end by making an informed choice and

wishes of such patients to be permitted to die with dignity are not respected and it is difficult for the medical practitioner to take a decision in accordance with these wishes, due to the fear of facing penal consequences. This situation is depriving the citizens of the country of a precious fundamental right guaranteed to them by the Constitution, namely the right to die with dignity, which is implicit in Article 21 of the Constitution.

2. The Petitioners are not narrating the entire facts of the case for the sake of brevity and the facts mentioned in the Writ Petition be read as a part of this application for the purposes of this application.
3. It is most respectfully submitted that the Petitioner, in this Writ Petition, is praying for a direction to the Respondent, to adopt suitable procedures, in consultation with State Governments where necessary, to ensure that persons of deteriorated health or terminally ill should be able to execute a document titled "MY LIVING WILL & ATTORNEY AUTHORISATION" which can be presented to hospital for appropriate action in event of the executant being admitted to the hospital with serious illness which may threaten termination of life of the executant or in the alternative, issue appropriate guidelines to this effect.
5. That to adopt such a procedure or to issue guidelines it will be in the interest of justice that a committee of experts including doctors, social scientists and lawyers to study the aspect of advance directives or Living Wills is constituted during the pendency of the accompanying writ petition. The recommendations of such constituted expert committee will be of great help for understanding and adjudicating the issue raised in the

6. In view of the above mentioned facts it is respectfully submitted that this Hon'ble Court may be pleased to pass the following orders during the pendency of the accompanying writ petition:

PRAYER

- a) constitute an expert committee of experts including doctors, social scientists and lawyers to study into the aspect of issuing guidelines enabling the people who are terminally ill and are very old to issue advance directives including executing Living Wills expressing their wishes as to the medical treatment they would like to receive if they go into the persistent vegetative state or in long unconsciousness or in coma etc;
- d) pass any other or further/s orders as this Hon'ble Court may deem fit and proper.

NEW DELHI
25.04.2005

PETITIONER

THROUGH: PRASHANT BHUSHAN
COUNSEL FOR THE PETITIONER