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THE RIGHT TO DIE WITH DIGNITY: FROM JUDICIAL COURAGE TO SIMPLIFIED REALITY

Common Cause (A Regd. Society) v. Union of India & Anr., (2018) 5 S.C.C. 1 (India)

~ Tanvi Firodiya

ABSTRACT

There is a particular kind of constitutional question that courts tend to circle rather than answer — not because the law is unclear, but because the answer requires saying something that the institution has not been ready to say. For much of independent India's legal history, the question of whether a dying person could lawfully refuse treatment was exactly that kind of question. It sat in the background of medical practice, in the exhausted silences of hospital waiting rooms, in the moral uncertainty of doctors who did not know what they were permitted to do and what they weren't. Common Cause (A Regd. Society) v. Union of India[1] did not resolve that uncertainty cleanly or completely. But it moved the law further than any prior judgment had managed, and its 2023 sequel[2] corrected much of what the 2018 ruling got wrong in practice. This commentary examines both: the constitutional reasoning that got the Court to yes, the procedural framework that initially made that yes nearly unusable, and the legislative absence that still hangs over the whole enterprise.

I. How We Got Here

1 Common Cause (A Regd. Society) v. Union of India & Anr., (2018) 5 SCC 1.

2 Common Cause v. Union of India, Suo Motu Writ Petition (C) No. 1145/2022 (S.C. India, Jan. 24, 2023).

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Nobody died to bring this case. That is worth saying plainly, because the cases that actually shift Indian constitutional law usually arrive attached to someone's specific suffering — a person wrongly imprisoned, a community dispossessed, a family that lost someone to state violence. *Common Cause* arrived differently. An NGO, acting without a named individual petitioner, walked into the Supreme Court in 2005 and asked a clean legal question: does the Constitution protect a citizen's right to die with dignity, and can that right be exercised in writing before the moment of crisis arrives? The Court received the petition. Then it took thirteen years to answer it. That delay was not administrative. It was, in significant part, institutional reluctance.

The prior case — the one still taught first in this area — is *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 S.C.C. 454 (India).[3] Aruna Shanbaug had worked as a nurse at KEM Hospital in Mumbai. In 1973, she was sexually assaulted and strangled with a dog chain by a ward boy. The strangulation caused severe brain damage. She did not die. She remained at KEM, cared for by the same hospital's nursing staff, for the next four decades — 42 years of what the medical records described as a persistent vegetative state. When a journalist filed a habeas corpus petition on her behalf in 2011 seeking permission to withdraw treatment, the Supreme Court permitted passive euthanasia in her specific circumstances. But the two-judge bench was careful, perhaps too careful, to confine its ruling. This was not a right, they said. It was a court-supervised exception. Nobody else could point to the judgment and say: this applies to me too. The constitutional question — whether dignity under Article 21 encompasses the right of every competent Indian to refuse end-of-life treatment — was set aside for another day. *Common Cause* was that day.

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

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II. What Article 21 Has to Do With Dying

Each of the five judges started with Article 21.[4] They had to. It is the constitutional ground on which almost all fundamental rights litigation in India is fought, and its guarantee that no person shall be deprived of life or personal liberty except according to procedure established by law has been progressively expanded over decades to cover an enormous range of human entitlements — shelter, health, education, a clean environment, and, most recently, privacy. The question before this bench was whether "life" in Article 21 also carries within it a right to determine the manner of one's dying. Whether, in other words, a person's constitutional personhood includes some authority over the body they inhabit when that body is being kept alive against their previously recorded wishes.

It is Justice Chandrachud's opinion that repays the closest reading. His reasoning does not rely on abstractions or on imported philosophical frameworks. He makes a blunter and, I think, more honest argument: keeping a body biologically functional against the recorded wishes of the person who lived in it is not a protection of life. It is a prolongation of physical process. The dignity that Article 21 has always been understood to protect — and dignity is a word the Indian Supreme Court does not use lightly; it carries weight in the jurisprudence going back to Maneka Gandhi — does not stop applying when consciousness stops. The article protects persons. Persons have wishes. Those wishes survive the person's capacity to repeat them, and overriding them in the name of protecting "life" is, in his formulation, a form of violation. He uses that word deliberately. I think he's right to.

> *"The right to die with dignity is an intrinsic facet of the right to live with dignity. Life and death are inseparable. To live with dignity is also to be able to face death with dignity."*

4 INDIA CONST. art. 21.

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— Justice D.Y. Chandrachud, Common Cause (2018)

Chief Justice Misra's plurality opinion worked along a slightly different path. Alongside Article 21, he drew on Article 14's[5] equal protection guarantee, and — most usefully — on the privacy judgment the Court had handed down just months before this one. *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India)[6] had established bodily autonomy as a fundamental right. The nine judges in that bench were largely thinking about Aadhaar and government data collection. Most were probably not thinking about ventilators. But the principle they articulated — that the State cannot reach into intimate personal decisions about the body — carries no inherent restriction to any particular domain. Once that holding is on the books, the argument against forcing a dying person to remain on life support against their written instructions becomes very difficult to sustain. The logical gap between "the State cannot intrude on bodily decisions" and "but the State can override your advance medical directive" is not one any of the judges in *Common Cause* was willing to defend. They shouldn't have been.

III. What the Court Actually Decided

Core Holdings of the Bench
1. Right to Die with Dignity: Held to be a fundamental right flowing from Article 21. Any adult of sound mind can refuse medical intervention — machines, tubes, resuscitation — even where that refusal leads directly to death.

5 INDIA CONST. art. 14.
6 K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

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2. Passive Euthanasia Recognised: Withdrawing or withholding life-sustaining treatment is lawful. Administering a drug or agent to actively terminate life is not. The Court was precise about this line and meant it.
3. Advance Directives Given Legal Standing: A person may, while competent, execute a document directing what medical treatment they refuse in the event they later lose the ability to communicate. That document carries legal weight.
4. Procedural Framework Laid Down: The Court prescribed a mechanism — witnesses, notarisation, magistrate countersignature, registration, medical boards, High Court oversight — to guard against misuse. The mechanism turned out to be the judgment's largest practical problem.

The active-versus-passive distinction is, frankly, the part of this judgment I have the most difficulty with — not because the Court drew a line, but because it drew that particular line without adequately engaging with the objections to it. A doctor who removes a ventilator because an advance directive says to is acting lawfully. A doctor who injects a substance to end that same patient's life, at that same patient's explicit prior direction, is not. The outcomes in these two scenarios can be medically identical. The patient's wish is identical. In the second case, the act is arguably more merciful and faster. And yet the law treats them as categorically different. The omission-versus-commission distinction that underlies this has been contested in moral philosophy for at least five decades — James Rachels' 1975 critique in the New England Journal of Medicine remains one of the most cited pieces in bioethics precisely because it demolishes the intuitive appeal of that distinction so efficiently. The bench in *Common Cause* did not engage with Rachels or with the substantive critique. It drew the line and moved on. In

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the context of an Indian society that was not yet ready for a more expansive ruling, that was probably the practically sensible approach. The philosophical unresolved-ness is still there, though. It will come back.

IV. The 2023 Revision: When the Court Had to Fix Its Own Mistake

The standard account of *Common Cause* in the law reviews is largely celebratory. A five-judge bench finally stepped up, the right was recognised, the framework was set. What the standard account tends to underplay — or omit entirely — is that the procedural framework the 2018 judgment constructed around the substantive right was, for the overwhelming majority of Indians, practically inaccessible.

Consider what the 2018 guidelines actually required. To execute a valid advance directive, a person needed two witnesses. Then a notary. Then — separately, as an additional mandatory step — a countersignature from a Judicial Magistrate First Class. Then registration with the local government body. That sequence was the creation process. If you were later hospitalised in a condition where the directive needed to be activated, the process became more demanding still. A two-tier medical board review was required. The first board — the primary review mechanism — had to be constituted by the High Court. Not referred to the High Court when there was a contested question. Constituted by it as a matter of routine, for every case, as the standard first step before any directive could be acted upon. A retired teacher in a tier-three city with a terminal diagnosis. A family managing an emergency in a district hospital with no legal infrastructure nearby. For these people — and they are the majority of the people this right was supposed to serve — the judgment had given them something on paper that they could not actually touch.

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The result, over the five years following the ruling, was predictable: near-zero uptake. The right existed in the law reports. It did not exist in any meaningful way in the hospitals and towns where it mattered. In January 2023, the Court did something unusual.[7] It reopened the matter suo motu — on its own motion, without a fresh petition, without a tragedy to force its hand — and revised the guidelines. The Judicial Magistrate requirement was removed; a Notary or Gazetted Officer suffices now, which changes the practical reality for most of India. Medical board review shifted to the hospital level, with a secondary board for appeals, compressing timelines from potential weeks to days. The High Court remains available for genuine disputes but is no longer the mandatory threshold for every case. These changes left the substantive rights of the 2018 judgment entirely intact. What they did was make those rights usable.

V. What the Judgment Tells Us About the Court, and What It Doesn't

I want to resist the version of this that turns into a simple story of progressive courts doing progressive things. That reading flattens something important. Article 21[8] had been available as a hook for this ruling since at least the 1980s, when the Court began expansively reading "life" to include "life with dignity." The right to privacy holding in *Puttaswamy* — which the Common Cause bench leaned on heavily — was unanimous and emphatic on bodily autonomy. There was no legal obstacle that prevented an earlier bench from deciding this case the same way. What prevented earlier benches was reluctance. Cultural, institutional, temperamental reluctance. The question of dying touches things in India that courts do not like to touch: deep religious disagreement about what death means and who controls it, professional anxiety among physicians about liability, family structures in which individual preference is often

7 Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill (proposed, unenacted as of date of writing).

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subordinated to collective decision, and a palliative care infrastructure so underdeveloped that even if the right was recognised, its dignified exercise would require resources most people do not have.

What eventually broke the impasse was not a shift in cultural values — those shifts, to the extent they are happening, are slow and uneven. What broke it was technology. The ventilator, the feeding tube, the ICU protocols of the late twentieth century created a form of human existence that older moral and legal frameworks were not built to address: a person biologically alive, indefinitely sustainable, but absent in every experiential sense. No tradition had a ready answer for this. Families were left sitting with it in real time, in hospital corridors, without a legal framework that could help them think, or decide, or grieve. *Common Cause* was, at its core, the Supreme Court acknowledging that this was happening and that the law owed something to the people caught in it.

The problem that persists is legislative. The Medical Treatment of Terminally Ill Patients (Protection of Patients and Medical Practitioners) Bill[9] — which would have converted these judicially created rights into statutory law — has never been passed. India's right to die with dignity rests, as of today, entirely on what a bench of five judges said in March 2018 and what a bench of two revised in January 2023. No vote in Parliament. No democratic deliberation on the terms. Just precedent. And precedent, even from a Constitution Bench, is revisable. A differently composed bench, with different instincts about where Article 21's outer limits lie, could narrow this right without overruling it formally — through interpretation, through the imposition of additional safeguards, through readings that restore the kind of procedural inaccessibility the 2023 order dismantled. That is not a hypothetical concern. Indian constitutional law has history with rights that seemed settled until a later court reconsidered them.

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Conclusion

Common Cause deserves its reputation as a significant judgment, and the five judges who wrote it deserve credit for engaging seriously with a question the Court had spent decades declining to answer. The 2023 revision deserves credit of its own kind — it is not common for a court to look at its own procedural framework, conclude it isn't working, and change it. Both things are true. What is also true is that this right remains incomplete. It rests on judicial construction, not on a statutory foundation. It applies in a country where palliative care is scarce, legal infrastructure is unevenly distributed, and most people have no idea the right exists, let alone how to exercise it. A person in a hospital in Jharkhand holding a living will that a Gazetted Officer countersigned is, today, in a materially different position than she was before 2018. That is real. It is also, by any serious measure, not enough — and the difference between what the Court has managed to do and what Parliament has declined to do is the measure of how much work remains.