

Euthanasia as a Case of Judicial Entrepreneurship in India: Analyzing the Role of the Supreme Court in the Policy Process of Euthanasia

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Abstract : Euthanasia in India is a politically dormant policy issue in the sense that discussions around it are sporadic in nature (usually with developments in specific cases) and it stays as a dominant issue in the public domain for a fleeting period. In other words, it is a non-political issue that has been unable to successfully get on the policy agenda. This paper studies how the Supreme Court of India (SC) plays a role in euthanasia's policy making. In 2011, the SC independently put a law in place that legalized passive euthanasia through its judgement in the Aruna Shanbaug v. Union of India case. According to this, it is no longer illegal to withhold/withdraw a patient's medical treatment in certain cases. This judgement, therefore, is the empirical focus of this paper. The paper essentially employs two techniques of discourse analysis to study the SC's system of argumentation. The two methods, Text Analysis using Gasper's Analysis Table and Frame Analysis - are complemented by two discourse techniques called metaphor analysis and lexical analysis. The framework within which the analysis is conducted lies in 1) the judicial process of India, i.e. the SC procedures and the Constitutional rules and provisions, and 2) John W. Kingdon's theory of policy windows and policy entrepreneurs. The results of this paper are three-fold: first, the SC dismiss the petitioner's request for passive euthanasia on inadequate and weak grounds, thereby setting no precedent for the historic law they put in place. In other words, they leave the decision open for the Parliament to act upon. Hence the judgement, as opposed to arguments by many, is by no means an instance of judicial activism/overreach. Second, they define euthanasia in a way that resonates with existing broader societal themes. They combine this with a remarkable use of authoritative and protective tones/stances to settle at an intermediate position that balances the possible opposition to their role in the process and what they (perhaps) perceive to be an optimal solution. Third, they soften up the policy community (including the public) to the idea of passive euthanasia leading it towards a Parliamentary legislation. They achieve this by shaping prevalent principles, provisions and worldviews through an astute use of the legal instruments at their disposal. 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.

Keywords : argumentation analysis, Aruna Ramachandra Shanbaug, discourse analysis, euthanasia, judicial entrepreneurship, policy-making process, supreme court of India

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