SC's Verdict on Passive Euthanasia and Living Will

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Why in news?

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A Constitution Bench has made passive euthanasia and living will permissible.

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A dignified death should follow a meaningful existence

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What is SC's rationale?

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- **Right to Die** - The Supreme Court has upheld that the fundamental right to life and dignity includes right to refuse treatment and die with dignity.
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- It observed that the fundamental right to a "meaningful existence" includes a person's choice to die without suffering.
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- But it is held that active euthanasia was unlawful.
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- **Dignified death** - Lack of legal backing sometimes lead to suffering and undignified death of the patient.
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- As, societal pressure and fear of criminal liability by relatives and medical doctors hamper them from making the needed decision.
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- Religion, morality, philosophy, law and society have differing opinions on whether right to life included right to death or not.
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- However, they all unanimously share the idea that a person should die with dignity.
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- **Individual Liberty** - The issue of death and when to die transcended the boundaries of law.
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- But the court had intervened because the sanctity of life included the dignity and autonomy of the individual.
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- The search for a meaningful existence, the pursuit of happiness included the exercise of free will which includes the right of a person to refuse medical treatment.
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- A person need not give any reasons nor is answerable to any authority on why he/she should write an advanced directive.
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What are SC's guidelines on living will?

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- A Living Will is a healthcare directive, in which people can state their wishes in advance for their end-of-life care, in case they are not in a position to make a decision then.
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- **Who** - An adult with a sound and healthy mind can make a Living Will.
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- It should be voluntarily executed and based on informed consent.
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- It should be expressed in specific terms in a language “absolutely clear and unambiguous”.
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- **Content** - The Living Will should contain the circumstances in which medical treatment should be withheld or withdrawn.
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- It should give the name of the “guardian or close relative” who will give the go-ahead for starting the procedure of passive euthanasia.
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- It should specify that the Will can be revoked any time.
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- An individual has the right to withdraw or alter the Living Will, but only in writing.
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- So, if there are more than one Living Will, the latest one will be valid.
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- **Validity** - The Will shall be attested by two independent witnesses.
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- It should preferably be counter-signed by the Judicial Magistrate First Class (JMFC) who is assigned the jurisdiction by the District Court.
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- **JFMC** - The JMFC shall preserve one hard copy, along with one in the digital format, in his/her office.
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- JMFC shall forward a copy of the Will to the Registry of the District Court.
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- JMFC shall inform the immediate family of the executor, if not informed.
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- A copy will be handed over to an official in the local government or Municipal Corporation or Municipality or Panchayat concerned.
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- This authority shall nominate a custodian for the Living Will.
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- Besides the guidelines, it was observed that modern medical science should balance its quest to prolong patient's life.
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- **Exception** - The court held that a Living Will shall not be applicable to the 'treatment in question'.
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- This is when there are reasonable grounds for believing that circumstances exist which the person did not anticipate at the time of making the advance directive.
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- And necessarily which would have affected his/her decision had he/she anticipated such circumstances.
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Source: The Hindu

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Quick Fact

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Aruna Shanbaug case

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- Aruna Shanbaug is an Indian nurse who spent around 40 years in a vegetative state as a result of a sexual assault.
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- In 2011, the Supreme Court, in a landmark judgement, issued a set of broad guidelines legalizing passive euthanasia in India.
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- However, the present judgement observed that the previous judgement had complex procedure to get approval for passive euthanasia.
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- This consequently made the dignity of a dying person dependent on the whims and will of third parties.
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- The present judgement, allowing individual Living Will and framing the appropriate guidelines, has addressed the earlier shortfalls with taking forward passive euthanasia.
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