BEYOND JUDICIAL GATEKEEPING: THE BIO-CONSTITUTIONAL IMPERATIVE FOR DIGITAL ADVANCE DIRECTIVES IN INDIA

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ABSTRACT

The law in India has established the right to die with dignity as a fundamental right guaranteed by Article 21 of the Constitution, but there is a disconnect between the letter and spirit of the law in practice. This paper makes a novel contribution to the bio- constitutional debate about passive euthanasia in India by suggesting that the Supreme Court's historic decision in Common Cause v. Union of India and the 2023 procedural (paradoxical) 'simplification' is still caught in the mode of 'administrative gatekeeping' that somehow ends up failing the terminal patient at the bedside. Instead of being confined to case commentaries, this paper presents a new 'Bio-Constitutional Trilemma' that captures the systemic conflict between judicial paternalism, medico-legal paranoia, and patient autonomy in exercising their right to self-sovereignty. It reconsiders the constitutional morality framework that Dr. B.R. Ambedkar laid down alongside that of Ronald Dworkin, and its ties with Kantian dignity, and suggests how the existing end-of-life protocols unwittingly prioritize therapeutic concerns of majoritarian sentiments over the fact that there is a specifically bodily autonomy to sustain. To address this deadlock, the paper presents an innovative policy idea that of embedding the concept of Advance Medical Directives in India's digital health ecosystem which includes Ayushman Bharat Digital Mission (ABDM) and Ayushman Bharat Health Account (ABHA). This paper provides a practical, statutory blueprint that could convert the constitutional right into a real, self-executing reality, giving practical effect to the Right of the Terminally Ill Patients Act through embedding digital advance directives into cloud-based consent managers and testing them against the Digital Personal Data Protection Act 2023 and criminal liability under Sections 100, 105, and 108 of the Bharatiya Nyaya Sanhita 2023.

Keywords: Bio-Constitutional Trilemma; Article 21; passive euthanasia; advance medical directives; Ayushman Bharat Digital Mission (ABDM); constitutional morality; Common Cause v. Union of India; Bharatiya Nyaya Sanhita 2023.

I. Introduction: The Bio-Constitutional Friction

When modern medical technology possesses the capability to artificially sustain cardiopulmonary functions long after higher brain functions have permanently ceased, the traditional boundary between prolonging life and prolonging the process of dying vanishes. In the intensive care units of India, medical treatment often turns natural death into a medicalized and extended biotic process. At these times, a constitutional democracy must ask one simple question: ought the body of the individual to be to the individual, or shall it be the subjects of state-enforced medical paternalism? Over three decades, Indian constitutional jurisprudence has undergone a profound evolution, expanding Article 21 from a narrow prohibition against arbitrary state deprivation into an expansive, affirmative guarantee of human dignity.[1] The Supreme Court reached a defining milestone in *Common Cause (A Regd. Society) v. Union of India*[2] where it has been officially affirmed that the right to live with dignity is a natural continuation of the right to die with dignity and includes passive euthanasia as well as the execution of Advance Medical Directives (living wills). Further, the landmark privacy legislation in *K.S. Puttaswamy v. Union of India,*[3] put aspects of personal autonomy, bodily integrity, and meaningful control over intimate decisions at the heart of fundamental freedoms at the constitution's core. However, even after eight years since *Common Cause* and despite the Supreme Court's changes in procedure in 2023,[4] it remains a remarkable administrative challenge to execute a living will in India and it does not often work on an emergency bedside. There is a huge difference between the constitutional rhetoric being spewed in New Delhi and clinical treatment on the ground in the emergency rooms of the country.

This paper is a step away from the plethora of literature that summarizes precedents or provides with a basic commentary on the cases. Rather, it proposes a new conceptual construct, the ‘Bio-Constitutional Trilemma' which explores how Indian end-of-life care struggles to move forward even as it is constrained by judicial control, medical apprehensions for criminal liability and patient autonomy. To resolve this impasse, this paper proposes bridging constitutional jurisprudence with modern digital health infrastructure, specifically integrating Advance Medical Directives into India's Ayushman Bharat Digital Mission (ABDM) and

[1] *AK Gopalan v. State of Madras*, AIR 1950 SC 27; Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
[2] *Common Cause (A Regd. Society) v. Union of India*, (2018) 5 SCC 1.
[3] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
[4] *Common Cause (A Regd. Society) v. Union of India*, Miscellaneous Application No. 1699 of 2019 in Writ Petition (Civil) No. 215 of 2005, Order dated 24 January 2023 (SC).

Ayushman Bharat Health Account (ABHA) ecosystem. The paper unfolds in six distinct parts: Part II deconstructs the doctrinal shifts from *P. Rathinam* to *Common Cause*; Part III formulates the Bio-Constitutional Trilemma and deconstructs the normative tension between constitutional morality and majoritarian therapeutic sentiment; Part IV critiques the operational flaws of the 2023 guidelines and highlights the parallel statutory precedent under the Mental Healthcare Act 2017; Part V examines comparative insights from the United Kingdom, the Netherlands, and the United States; Part VI outlines criminal liability risks under the Bharatiya Nyaya Sanhita 2023 and presents a digital-first statutory blueprint the Rights of Terminally Ill Patients Act; and Part VII concludes.

II. Deconstructing the Judicial Arc: From Criminalization to Conditional Autonomy

A. The Oscillating Jurisprudence: Rathinam, Gian Kaur, and Aruna Shanbaug

India's end-of-life jurisprudence began with significant conceptual ambiguity. In *P. Rathinam v. Union of India*[5] a Division Bench invalidated Section 309 of the Indian Penal Code 1860,[6] holding that the right to live under Article 21 includes a positive right not to live. Drawing an analogy between the freedom of speech (which includes the right to remain silent) and the right to life, Rathinam concluded that forcing an individual to endure extreme suffering against their will violated personal liberty. Rathinam rightly specified quality of life as the quintessential aspect of dignity, however, the idea of active self-harm was confused with the passive non-cooperation with unwelcome medical treatment, which meant huge legal grey areas for criminal intention and interference by the state.

The Constitution Bench in *Gian Kaur v. State of Punjab*[7] where it held that criminalizing attempted suicide was constitutionally valid and therefore, the Rathinam decision was reversed. The Bench concluded that the "right to life" is a natural right, while suicide is the act of the unnatural end of life, and therefore the two rights are contradictory. More importantly, however, Gian Kaur made an early distinction between the "active termination of life" and the "passive withdrawal of life support" from a terminally ill patient when there is no doubt about the patient's death. It noted that death with dignity is an ingredient of a natural death and this

[5] *P. Rathinam v. Union of India*, (1994) 3 SCC 394.
[6] Indian Penal Code, 1860, § 309.
[7] *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648.

has a different constitutional basis compared to self-death. That subtle distinction remained dormant for fifteen years, laying the doctrinal foundation for passive euthanasia in India.

Some fifteen years later, *Aruna Ramchandra Shanbaug v. Union of India*[8] put *Gian Kaur's* dictum into practice. The Court gave permission to passively euthanize a hospital nurse who had been in a persistent vegetative state for thirty-seven years after being brutally sexually attacked, under the direction of the High Court and its parens patriae jurisdiction. The progress made in Shanbaug was pioneering, but it set new norms in heavy-handed judicial enforcement. The Court was extremely suspicious of both families and physicians, and it made no provision for competent citizens to have any reasonable way of controlling future treatment without first getting approval from the High Court, under Article 226, which requires it.

B. Common Cause (2018): The Tripartite Recognition of Self-Sovereignty

The landmark ruling in *Common Cause (A Regd. Society) v. Union of India*[9] fundamentally reshaped Indian bioethics by establishing three principles across four concurring opinions: (1) the right to die with dignity is an intrinsic fundamental right under Article 21; (2) passive euthanasia is constitutionally protected; and (3) competent adults possess a fundamental right to execute Advance Medical Directives to govern future care should they lose decision-making capacity.

Chief Justice Dipak Misra, in his words and along with Justice A.M. Khanwilkar delivered a verdict stating that compelling a terminally ill person on to unwanted life support infringes upon bodily integrity and the person becomes a mere continuation of life. In Justice D.Y. Chandrachud's theoretical perspective, the question of advance directives also rests on the balance between personal liberty, the rule of self-determination regarding one’s life and body, and constitutional morality. Justice A.K. Sikri pointed out that dignity is not just a state of being, but one of ethics, which means respect for a person's right and autonomy in how and when they die. Justice Ashok Bhushan further clarified that prospective refusal of treatment is simply the temporal extension of a competent patient's existing right to refuse treatment at the time it is offered.

[8] *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 SCC 454.
[9] *Common Cause (A Regd. Society) v. Union of India*, (2018) 5 SCC 1.

III. The Bio-Constitutional Trilemma and Constitutional Morality

A. Theoretical Framework: Ambedkar, Dworkin, and Kant

To understand why passive euthanasia remains fiercely contested in India, one must examine the tension between popular morality and constitutional morality. When Dr. B.R. Ambedkar introduced the Draft Constitution to the Constituent Assembly on November 4, 1948, he famously emphasized that constitutional morality is not an inherent societal instinct but a cultivated discipline requiring, in the words he borrowed from George Grote, ***'a paramount reverence for the forms of the Constitution.'***[10] In *Navtej Singh Johar v. Union of India*[11] Chief Justice Dipak Misra held, in terms that have since become the doctrine's standard formulation, that ***'constitutional morality would prevail over social morality.'***

In end-of-life care, majoritarian morality influenced by traditional religious beliefs across Hinduism, Islam, and Christianity that view life as an indelible divine gift frequently opposes treatment withdrawal. Popular sentiment often views withholding care as morally impermissible. Constitutional morality, conversely, protects individual choice regarding bodily suffering. Similarly, the distinction between 'experiential interests' (the desire for daily pleasures) and 'critical interests' (settled critical convictions in the meaning of one's life as a whole) by Ronald Dworkin is of immense significance here: a person is worthy of respect for their settled critical convictions about how the end of his or her life ought to be shaped rather than simply a man or woman of pleasure.[12] This is exactly what Immanuel Kant meant by the categorical imperative: human beings are ends in themselves, never means of state ideology or medical technology.[13]

B. Formulating the 'Bio-Constitutional Trilemma'

This paper formulates the 'Bio-Constitutional Trilemma' to explain the structural paralysis in India's current framework. The three institutions that compete for dominance in the trilemma are (1) Judicial Gatekeeping, which represents the procedural paternalism of doctors and the dread that their consent would be manipulated by the avaricious beneficiaries; (2) Medico-

[10] Constituent Assembly Debates, vol 7 (4 November 1948) (remarks of Dr. B.R. Ambedkar).
[11] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
[12] Ronald Dworkin, Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom (Vintage Books 1994) 199-217.
[13] Immanuel Kant, Groundwork of the Metaphysics of Morals (Mary Gregor ed, Cambridge University Press 1998) 42-43.

Legal Paranoia, which reflects the ongoing importance of the continuing aggressive, unwanted medical intrusions so that treating physicians are protected from criminal liability under homicide law; and (3) Self-Sovereign Autonomy, which represents the patient's fundamental constitutional right to refuse medical intervention.

IV. The Myth of Simplification: Critiquing the Supreme Court's 2023 Guidelines

A. Deconstructing the 2023 Procedural Modifications

The Supreme Court on January 24, 2023, amended the procedure, understanding that the requirement of Judicial Magistrate First Class (JMFC) countersignatures and secondary medical boards by district collectors was nearly impractical as per the different sections of the guidelines of 2018.[14] The modified framework replaced magistrate countersignatures with notary or gazetted officer attestation, the secondary cadre was removed from magistrates' purview and shifted to hospitals and, under the new provisions of Article 226, High Court intervention was reserved for matters which were truly of mutual disagreement between the medical boards and the family member. Although these changes have been made, the system is still not suitable when medical emergencies are acute. Physical paper living wills are not usually found in an emergency department when an incapacitated patient arrives. Above all, hospital management panels are reluctant to summon a second medical board without the certainty of statutory protection, as they are very aware of potential harassment or criminal proceedings. Judicial promulgation of paper rules never really resolves the issues of operational urgency for an emergency workflow during clinical activities.

B. The Mental Healthcare Act 2017 Parallel: An Unjustified Statutory Dichotomy

The inadequacy of judicially-crafted rules becomes even more apparent when compared to existing statutory precedents. Section 5 of the Mental Healthcare Act 2017[15] explicitly validates advance directives for mental illness without requiring notary attestation, magistrate countersignatures, or multi-tiered medical boards. Maintaining stricter administrative burdens for terminal physical illness creates an unjustified statutory anomaly where Parliament trusts prospective directives for mental health but distrusts them for physical care.

[14] *Common Cause (A Regd. Society) v. Union of India*, Miscellaneous Application No. 1699 of 2019 in Writ Petition (Civil) No. 215 of 2005, Order dated 24 January 2023 (SC).
[15] Mental Healthcare Act, 2017, § 5.

V. Comparative Jurisprudence: Structural Models for Indian Reform

A. United Kingdom: Statutory Bindingness and Clinical Autonomy

In the United Kingdom, common law principles established in *Airedale NHS Trust v. Bland*[16] were codified under Sections 24–26 of the Mental Capacity Act 2005.[17] The UK framework binds healthcare providers to valid advance decisions without requiring prior court approval, placing a statutory duty on clinicians to check for existing directives while protecting doctors from civil and criminal liability when acting in good-faith compliance.

B. The Netherlands: Retrospective Review vs. Prior Gatekeeping

The Dutch law on the Termination of Life on Request and Assisted Suicide (Review Procedures) 2002,[18] is based on so-called Regional Euthanasia Review Committees consisting of medical, legal, and ethical specialists who review cases after withdrawal of treatment. The collection system is a retrospective review model to make sure there is clear accountability without causing any administration delay in acute care.

C. United States: POLST Protocols and Clear Evidence

Following *Cruzan v. Director, Missouri Department of Health,*[19] American states developed Portable Orders for Life-Sustaining Treatment (POLST) programs. The fact that POLSTs are used effectively as medical orders in the United States to ensure that advance directives are translated into concrete actions and directives that can be readily accessed and understood by healthcare and emergency services is one useful model to consider in India's digital health continuum.

VI. Legislative Reform: BNS 2023 Risks and the Digital ABDM Blueprint

A. Criminal Liability Under Bharatiya Nyaya Sanhita 2023

The enactment of the Bharatiya Nyaya Sanhita (BNS) 2023[20] preserves strict criminal

[16] *Airedale NHS Trust v. Bland*, [1993] AC 789 (HL).
[17] Mental Capacity Act 2005, c 9 (UK), §§ 24-26.
[18] Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002 (Netherlands).
[19] *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990).
[20] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023.

penalties for culpable homicide under Sections 100 and 105 (formerly IPC Sections 299 and 304, for culpable homicide not amounting to murder) and abetment of suicide under Section 108 (formerly IPC Section 306). Because the BNS contains no express statutory exemption for withdrawing life support under an advance directive, treating physicians remain exposed to criminal prosecution if judicial guidelines are challenged. Statutory safe-harbour provisions are essential to eliminate this medico-legal paranoia.

B. The Novel Digital Solution: Integrating Living Wills with ABDM and ABHA Health Accounts

To eliminate physical administrative barriers, this paper proposes integrating Advance Medical Directives directly into India's digital health infrastructure the Ayushman Bharat Digital Mission (ABDM). By linking verified advance directives to a citizen's unique 14-digit Ayushman Bharat Health Account (ABHA) ID, living wills can be stored securely on cloud-based health repositories. Under this digital architecture, when an incapacitated patient is admitted to an ICU, treating doctors can query the ABDM Consent Manager network to verify existing directives instantly. This digital framework complies fully with the Digital Personal Data Protection Act 2023,[21] ensuring explicit, revocable, and tamper-proof consent management while providing emergency clinical access.

C. Blueprint for the Rights of Terminally Ill Patients Act

The Parliament should adopt a comprehensive Rights of Terminally Ill Patients Act with six elements: (1) clear statutory recognition of autonomy of patients at the end of life under Article 21; (2) digital execution of the will through ABHA ID or simple notarization; (3) replacing state-level Ethics Committees by those in the hospitals; (4) introducing a National Digital Directive Registry to be run under ABDM; (5) anchoring a rule on hospitals to query the national registry upon emergency admission; and (6) statutory immunity for practitioners working with ensuring patients' wishes during end of life in good faith, both civil and criminal.

VII. Conclusion

Being given a right to 'die with dignity' does not give anyone permission to die too soon; it is a solemn recognition of human value. It preserves constitutional protection which is

[21] Digital Personal Data Protection Act, 2023, No. 22 of 2023.

guaranteed under Article 21 when it starts to suffer from a terminal disease. Though the Constitution has provided foundations from P. Rathinam to Common Cause, no rule of law can either serve as a substitute to legislation or obstruct the judges from following their responsibilities. Thus, Parliament's swift decision to include digital advance directives in Ayushman Bharat Digital Mission and enacting clear statutory protections can help in solving the Bio- Constitutional Trilemma and bring living wills into the reality of everyday life of every Indian citizen.