LIVING WILL / ADVANCE MEDICAL DIRECTIVE

AN INTERFACE BETWEEN MEDICAL SCIENCE AND LAW

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1. Will and Living Will

There is significant lack of understanding regarding the concept of a living will, also known as an Advanced Medical Directive (AMD). It is crucial to highlight that a living will or AMD is fundamentally different from a traditional will, which becomes effective only after a person's death. A traditional will primarily serves the purpose of outlining the disposition of an individual's property and assets following their passing. In contrast, a living will addresses critical healthcare decisions that may arise during a person's lifetime, particularly in situations where they are unable to communicate their preferences due to illness or incapacity.

The primary objective of a living will is to allow individuals to express their wishes regarding medical treatment and end-of-life care, ensuring that they can experience a peaceful and dignified passing. This legal document empowers individuals to outline their desires relating to specific medical interventions or to decline certain treatments, providing clarity for healthcare providers and loved ones during emotionally challenging times.

Understanding the distinction between a traditional will and a living will is vital for individuals as they plan for their futures. By creating a living will, people can take control of their healthcare preferences, ensuring that their values and wishes are respected, even when they may no longer be able to articulate them. This proactive approach not only alleviates the burden on family members but also promotes a more compassionate and respectful approach to end-of-life care.

2. Euthanasia & Living Wills :

The topics of living wills and euthanasia have been subjects of global debate and discussion in recent years. The term "euthanasia" is derived from the Greek words eu (meaning "good" or "well") and thanatos (meaning "death").

Several countries, including Luxembourg, the Netherlands, Switzerland, Belgium, Colombia, New Zealand, Australia, permit active euthanasia. In contrast, countries such as the United Kingdom, Spain, Austria, Italy, Germany, France, and Canada do not allow active euthanasia. In the United States, active euthanasia is permitted only in specific states, including Oregon, Washington, and Montana. However, many countries worldwide have now legalized passive euthanasia. In India, active euthanasia remains prohibited.

Active euthanasia involves an intentional act by medical practitioners to cause a patient's death, such as administering a lethal injection or drug. On the other hand, passive euthanasia occurs when life-sustaining treatment is withheld or withdrawn. This may include actions such as disconnecting life support systems, removing feeding tubes, refraining from performing life-saving surgeries, or discontinuing life-extending medications. Passive

euthanasia is typically undertaken to allow a natural progression towards death in cases where recovery is not possible or treatment would only prolong suffering.

In India, there is no specific legislation governing either active or passive euthanasia. However, the Supreme Court of India has allowed passive euthanasia under certain conditions, thereby recognizing the concept of living wills and advance medical directives.

For the first time in India, the issue of passive euthanasia was addressed in the landmark judgment of Aruna Ramchandra Shanbaug vs. Union of India, reported in (2011) 4 SCC 454. This case concerned Aruna Shanbaug, a nurse at KEM Hospital, Mumbai, who had been in a permanent vegetative state since 1973 following an assault by a ward sweeper. A writ petition was filed on her behalf by her next friend, Pinky Virani (an activist), seeking a directive from the court to stop feeding her, as she was enduring immense agony with no prospect of recovery.

In its judgment, the Supreme Court held that passive euthanasia could be permitted for patients in a persistent vegetative state. The court also observed that Section 309 of the Indian Penal Code (attempt to commit suicide) had become anachronistic. The legislature has since taken note of this observation, and the provision has not been replaced in the Bharatiya Nyaya Sanhita, 2023. According to the court, passive euthanasia is permissible when a person is clinically dead, i.e., when there is irreversible cessation of the entire brain's functioning.

The court also deliberated on both types of euthanasia and reiterated that active euthanasia is impermissible. This position was earlier upheld by the constitutional bench of the Supreme Court in the Gian Kaur vs. State of Punjab case (1996 SCC (2) 648).

II] Living Will or Advance Medical Directive :

In 2018, the matter of passive euthanasia and living wills was revisited in the case of Common Cause (A Registered Society) vs. Union of India, reported in (2018) 5 SCC 1. In this case, the Supreme Court delivered a historic judgment recognizing living wills and laying down guidelines for passive euthanasia. These guidelines were further clarified and simplified in a subsequent judgment on an application filed by the Council for Critical Care Medicine.

Both judgments, rendered by a Constitutional Bench of five judges, are considered milestones in recognizing the right to die with dignity in India. The key highlights of these judgments are as follows:

1. In the Common Cause case, the Supreme Court

recognized the right to die with dignity as an integral part of the right to life enshrined in Article 21 of the Constitution of India.

2. The Supreme Court acknowledged the concept of a living will, also referred to as an Advanced Medical Directive (AMD). This allows individuals to document their decision to withdraw life-saving treatment under specific circumstances. The court also recognized the rights of patients who are incapable of making decisions to have their physicians inform their next of kin, next friend, or legal guardian to act in accordance with the living will.

3. The court approved the practice of appointing a healthcare representative, typically a close relative or family member, who would make decisions on behalf of the executant if they become incapable of doing so. The representative is responsible for communicating these decisions to the physician.

4. The AMD or living will must be signed in the presence of two attesting witnesses and countersigned by a Notary Public or a Gazetted Officer.

5. A copy of the living will must be forwarded to a designated officer of the government. In Kolhapur, for instance, the designated officer is the Law Officer of the Kolhapur Municipal Corporation.

6. In the event of a terminal illness, the attending medical practitioner must verify the genuineness and authenticity of the living will and inform the appointed healthcare representative. The hospital must then form a Medical Board comprising the treating physician and at least two specialists in the relevant field with a minimum of five years of experience. If the board concludes that continuing treatment would only prolong the process of death, they will issue a preliminary opinion recommending the withdrawal of life support.

7. If the Primary Medical Board approves the execution of the advance directive, the hospital is required to immediately constitute a Secondary Medical Board. This board must include one registered medical practitioner nominated by the Chief Medical Officer of the district and at least two subject experts (with at least five years of experience) who were not part of the Primary Medical Board.

8. The hospital must communicate the decisions of both the Primary and Secondary Medical Boards to the person or persons named in the living will. Additionally, they must ensure the consent of the individual or their representative before proceeding with the withdrawal of life support.

9. The Advance Medical Directive (AMD) must be submitted to the jurisdictional Judicial Magistrate of First Class (JMFC) before implementing the withdrawal of life support.

10. If permission is denied, the executant, their representative, or the treating doctor/staff may approach the High Court for further recourse.

11. Both the Primary and Secondary Medical Boards must render their decisions within 48 hours.

12. A copy of the living will should also be provided to the family physician, if applicable.

13. The executor of the living will may opt to incorporate it as part of their digital health record.

14. In cases where no AMD exists, the aforementioned procedure can be followed by the physician with the consent of the next of kin or legal guardian.

It is important to note that a living will can be revoked at any time by the individual. Furthermore, the Supreme Court's decision on this matter will continue to serve as the law until specific legislation is enacted by Parliament.

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