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REVIEW ARTICLE

Curious Case of Living Will: Medicolegal Aspects of Advanced Directives in India

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ABSTRACT

A Living Will, introduced by Luis Kutner in 1967, enables individuals to specify medical treatment preferences in case they lose decision-making capacity. Landmark cases, such as Karen Ann Quinlan in the U.S. and Aruna Shanbaug in India, significantly influenced legal frameworks on end-of-life decisions. Advanced Directives has gained momentum in hospital set-ups after the decision of the Courts of India in its favour in 2018. Evidence on its use is limited. Advance Directives, including Living Wills and Lasting Power of Attorney, safeguard patient autonomy in terminal care. Legal and medical frameworks, guided by ICMR regulations and Supreme Court rulings, ensure due process through physician validation and Medical Board reviews before execution. Courts may intervene in disputed cases. However, directives may be deemed inapplicable in situations involving potential recovery or ambiguity. Advance Directives play a crucial role in guiding medical decisions for patients in irreversible conditions such as coma, persistent vegetative state, severe brain injury, and advanced dementia.

KEYWORDS

• Advanced Directive • Living will • Medical board

INTRODUCTION

"No life that breathes with human breath has ever truly longed for death"

Alfred Tennyson

The first living will was drafted by Luis Kutner in 1967. It allowed a person to leave instructions about their treatment in the terminal stage of an illness. California was one of the first states to legalize Advanced Directives after

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the Quinlan case.[1,2] Tertiary care centers in India are witnessing a rise in the number of Advanced Directives. This increase follows India's ratification of the landmark United Nations Convention on the Rights of Persons with Disabilities.

A 'Living Will' is a legally binding document that specifies an individual's medical treatment preferences in the event they are unable to communicate their wishes to healthcare providers.. It is a directive created by the individual. An Advance Medical Directive is intended to safeguard personal autonomy and ensure a dignified end-of-life experience. In the United States, the utilization of Advance Directives has remained relatively low and unchanged in recent years, with minimal evidence of their adoption in India and worldwide.[3-6]

BACKGROUND

At the age of 21, Karen Ann Quinlan fell into a persistent vegetative state and was placed on a respirator. Her parents had to petition the court to have the respirator removed, allowing her to pass away naturally. This landmark case prompted state legislatures across the U.S. to enact Living Will laws and established a legal precedent supporting the right to decline unnecessary medical treatment.

Aruna Shanbaug, a nurse at a government hospital, was attacked by a ward boy, leaving her in a persistent vegetative state for 42 years until she passed away naturally.In 2018, the Supreme Court of India affirmed the fundamental right to a dignified death, permitting passive euthanasia under strict regulations. The judgment allowed the withdrawal of life support for patients with end stage illnesses, subject to approval by the High Court. This historic ruling legalized passive euthanasia in India and strengthened the recognition of an individual's right to arespectful end-of-life.

DISCUSSION

A Legally enforceable Advance Directiveis founded on the principle that if individuals have the right to decline life-saving treatment while they are mentally competent, they should retain that right even when they can no longer make decisions for themselves. There are The two primary categories of Advance Directives- the Living Will and the Lasting Power of Attorney. An Advance Directive serves as a written declaration of personal responsibility. A Living Will specifies an individual's treatment preferences and medical instructions, whereas a Lasting Power of Attorney enables a person to designate a surrogate or proxy to make healthcare decisions on their behalf.[7,8] For consent to be legally valid, it must fulfill specific fundamental requirements. An individual who is mentally sound and legally competent can provide consent based on accurate and sufficient information that has not been obtained through deception.[9] Consent can be either implied or explicitly given, whether through spoken words or in written form.

Euthanasia is classified into two types: active and passive. Active euthanasia involves administering a lethal substance to end a person's life, while passive euthanasia entails withdrawing or withholding medical treatments, leading to the individual's natural death.

The Medicolegal aspects of the topic are discussed under the following two heads.

A. ICMR Guidelines dated 12 May 2020 (10):

1. A Do Not Attempt Resuscitation (DNAR) order does not require stopping or withholding other life-sustaining treatments. It is applicable to patients with end stage diseases for whom CPR would be ineffective and would only prolong their suffering.
2. The treating physician makes the final decision

B. Supreme Court of India. Common Cause v Union of India (2018) (3).

1. **Living Will:** It is carried out for advanced-stage illness.undergoing palliative care when neither symptom relief nor recovery is anticipated.
2. **Responsibilities of the Treating Physician:** When notified of an Advance Directive, the treating physician confirms its validity through the jurisdictional Magistrate or First-Class Magistrate (JFMC).
3. Physician in agreement with the executor's will. If the physician is certain that the patient is terminal then will can be executed.

    a. Doctor concurs with the directive:

If the treating physician concurs with the executor's wishes, they will communicate with the executor's guardian or close relatives, explaining the illness, available treatment options, and the potential outcomes of alternative treatments.

b. Verification by Treating Physicians: The treating physician verifies that the will's contents represent the patient's informed decision after comprehensively understanding all available treatment options.

c. Responsibilities of the Hospital Medical Board: It includes the Head of the treating department along with a minimum of three specialists from fields such as internal medicine, neurology, psychiatry, oncology, cardiology, or nephrology.

d. Initial Assessment: The medical board provides a preliminary opinion on whether to implement the Living Will's instructions for withdrawing further medical treatment.

e. Responsibility of the Medical Board Appointed by the Jurisdictional Collector: The jurisdictional Collector forms another Medical Board with a similar composition from a different hospital. Their opinion, based on an assessment of the executor, may or may not align with the preliminary opinion.

f. Informing JMFC: The Chief District Medical Officer conveys the Board's decision to the JFMC before its implementation. They visit the executor and, after careful consideration, approve the decision.

4. Doctors oppose the executor's directive.

a. Denial by the Medical Board: It is the decision of the treating physician if treatment is to be given. The executor or family members or the treating doctor or hospital staff can approach the High Court.

b. Formation of a Divisional Bench: Decides upon the grant of approval or to refuse the same.

c. Establishment of a Medical Board by the Court. Constitute a Medical Board to perform another prognosis on the patient and submit a report about the feasibility of implementing the instructions envisaged in the Living Will.

C. When Are Advance Directives Not Applicable? (3, 10,11)

1. Likelihood of Recuperation. An Advance Directive is not applicable if the executor was unable to foresee advanced treatment options, such as newly developed cures or emerging technologies, when drafting the will.
2. Unclear or vague Living Will: if the Medical Boards deem the will as unambiguous then execution of living is not required.
3. Treatment protocol followed: If the Hospital Medical Board chooses not to implement the Living Will while treating the executor, it must submit an application to the Medical Board constituted by the Collector for review and further guidance on the directive.

Advance Directives assist in decision-making for conditions such as coma, persistent vegetative state, severe brain injury, stroke, advanced Alzheimer's disease, and other forms of dementia.

CONCLUSION

In India, a Living Will or Advance Directive applies exclusively to the discontinuation of medical treatment for patients with terminal illnesses. Even when an Advance Directive exists, withholding treatment requires authorization from two separate Medical Boards one established by the hospital and the other by the jurisdictional Collector. However, the Advance Directive remains an essential safeguard for patient autonomy and is duly considered in the decision-making process.

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