

India finally recognizes the Right to Die with Dignity

In a landmark judgment the Supreme Court of India has legalised 'passive euthanasia' and 'living wills' and thereby recognizing that people have a right to die with dignity. By the said judgment the Supreme Court has equated the fundamental 'right to live' enshrined in Article 21 of the Constitution of India with the 'right to die with dignity'. This ruling has significant social, moral and professional implications.

While in the past the Supreme Court has permitted passive euthanasia in exceptional circumstances under strict supervision of the Court, by the present judgment, the Supreme Court has for first time laid down safeguards for the proper implementation of Advance Medical Directives.

By the Public Interest Litigation (PIL), Common Cause has sought implementation of a robust system in the Country for certification of passive euthanasia and legal recognition of 'living wills'.

The Petitioners in the PIL has argued that Article 21 of the Constitution which guarantees the right to life would necessarily include the right to die with dignity. They have gone on to suggest that when medical experts suggest that a person afflicted by terminal disease has reached a point beyond recovery, then such person should be permitted/given the right to refuse further medical treatment or being put on life support which will only prolong the agony of the patient.

Additionally, it has been argued that a living will is a document that would allow a patient to give family members, relatives or such other person explicit instructions, in advance, on what medical treatments would be administered in the event the patient is diagnosed with a terminal disease or not in a position to express informed consent. Such living will could, amongst other things, include authorization to family members the right to switch of life support. In such cases, now relatives will be spared the agonising decision of removing life support and doctors will be guided solely by the "living will".

The Government in reply to the arguments put forth on behalf of the Petitioner, at first stated that they have in principal agreed to permit passive euthanasia and in that regard have also drafted 'management of patients with terminal illness, withdrawal of life support bill'.

However, the Government has opposed the concept of living wills, stating that the same will be misused and not viable as part of public policy.

In considering the aforementioned arguments, the Court stated that now that the Government has decided to allow passive euthanasia, the court would have to evolve safeguards for the same. The Court as stated above has set out the safeguards governing living wills and how the same can be drawn up, executed and given effect to. It should be mentioned that the directives have been laid out in exercise of the powers conferred on the Supreme Court under Article 142 of the Constitution of India for doing complete justice i.e. these directives and guidelines will be considered the law till such time as the Parliament brings a legislation in the field.

This judgment is a welcome relief for the 1.2 billion people of India who will now have the option to set out Advanced Medical Directives, should they, god forbid, suffer from terminal diseases.

The judgment further reflects the progressiveness of the Apex Court of the Country to keep up with the ever changing social environment in which we live.

Disclaimer: *This article has been prepared per the judgment of the Hon'ble Chief Justice of India and the Hon'ble Mr Justice Khanwilkar.*

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