INDIAN 'LIVING WILLS': LEGAL FRAMEWORK, ETHICAL IMPLICATIONS, AND PRACTICAL CHALLENGES

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ABSTRACT

Given the diminished capacity, life-sustaining treatment is frequently stopped in intensive care units (ICUs) without the patient's agreement, and families are left to make upsetting and occasionally unrepresentative decisions. Living wills, also known as advance directives (ADs), safeguard autonomy by empowering capable persons to decline future medical care. ADs represent fundamental rights to dignity and are legally binding in England and Wales under the Mental Capacity Act 2005. They were also upheld in India in the Common Cause v. Union of India (2018) case. Though moral quandaries continue to arise in the face of technological advancements, ethical grounds include resource allocation, religious freedom, and physiological autonomy. Clear foundations, practitioner instruction, and the possibility of moving towards required directives are all encouraged by legal scholarship.

I. Introduction

1.1Premise:

Critical sickness or treatment reduces autonomy, competence, and ability. Since patients' end-of-life care wishes are often unclear, the ICU often withdraws life support without consent. Physicians frequently consult family about therapeutic action, despite evidence showing that relatives find this very uncomfortable and do not always give assessments that reflect their relative's desires. In the event of disability, advance directives (ADs), or 'living wills,' are encouraged to protect patient autonomy.

1.2 Background Livings Wills:

A living will be essentially acts as a directive, towards practitioners and care takers, declaring the type of medical treatment and support system which a person wishes if he/she is unable to decide because of their terminal stage, founded on the principle of informed consent.[1]

The 2005 Mental Capacity Act will make ADs binding in England and Wales in October 2007. This has happened in the US for over 20 years. In 2018, the Supreme Court of India recognized living Wills in the Common Cause[2] Judgement and declared the right to die with dignity as a right guaranteed by the Constitution. Every adult with the mental capacity to make an informed decision can refuse medical care, including life-sustaining technologies. The Court ruled that a competent mental capacity individual can implement an advance medical directive with precautions.

1.3 Relevance:

Lack of resources in India's public health care system drives individuals outwards of private sector, while government-funded hospitals lack infrastructure, staff, etc. Medical bills[3] drive many Indians to poverty. This makes living wills crucial for eliminating costly therapies and maintaining autonomy and self-determination in final stage.

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[1]L.L Emanuel,H.R. Alpert, D.C. Baldwin, E.J.Emanuel, terminally ill patients Care About: Towards a validated construct of patients' perspectives, W ELSEVIER 419,419-431(2000).
[2] Common Cause (A Regd. Society) vs Union of India, (2018) 5 S.C.C. 1.
[3] Times of India (June 13, 2018). Health spending pushed 55 million Indians into poverty in a year: Study. https://timesofindia.indiatimes.com/india/health-spending-pushed-55-million-indians-into-poverty-in-a-year-study/articleshow/64564548.cms

II. Living Wills-The theory

2.1 Philosophical Theory

The philosophical issue of whether a person may consent to death decisions is deeper. Individuals may choose living wills for appropriate reasons. Some causes are:

1. Intensive care is costly and scarce, costing up to 20% of hospital budgets and 1% of GDP. The ICU kills 25% of critical patients.[4]

2. Body autonomy enables individuals to make choices about their body despite diminished agency. [5]

3. Jehovah's Witnesses have the right to decline blood transfusions. [6]

However, moral dilemmas are a major issue. In his work "A Call For New Perspectives For Living Wills (You Might Like It Here),[7]" C.B. Kruse examines another aspect of living wills and provides a comprehensive list of factors for practitioners to consider before advising clients to form one.

Technological advancement and moral dilemmas are highlighted. A general history of medical achievements is followed by an analysis of life support termination. The Paper concludes with the lawyer's decision-making function.

To address a rising jurisprudential inclination toward mandatory living Wills in many nations, clauses across the board are being added to clarify the process for healthcare workers.

III. Legal Jurisprudence

3.1 Mental Health Care Act

Section 5[8], highlights the right of a person who isn't a minor to write an Advance Directive

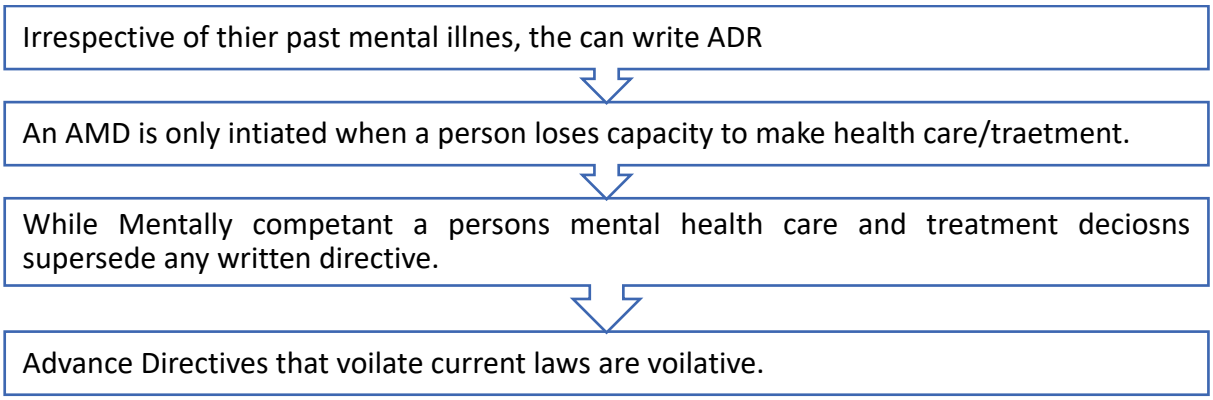
[4] Audit Commision: Critical to Success London.1999.
[5] Polderman KH, Metnitz PGH: Using risk adjustment systems in the ICU: avoid scoring an 'own goal'. Intensive Care Med, 31 NIH 1471,1471-1473 (2005)
[6] Doukas D: Advance directives in patient care: if you ask, they will tell you. Am Family Phys,59 AAFP 530,530-533(1999).
[7] Kruse, Clifton B. A Call For New Perspectives for Living Wills (You Might Like It Here),37 NIH 545,545-552(2002).
[8] Mental Health Act,2017, No. 10, Acts of Parliament,2017(India).

with, following specifications:

1. On the requirements on how he/she has to be treated and cared in furtherance of mental illness.

2. The specification on how he/she shouldn't be treated, for the mental illness.

3. Who he/she wants to appoint as his/her nominated representative, in accordance with section 14.



3.2 In Light Of Common Cause Judgement

Apart from the mental illness, there is no legal sanction, the living wills derive their legitimacy from them from the case of Common Cause judgement, highlighting the principles of self-determination and life and liberty.

In light of the same, the essentials laid down as follows:

1. Persistent sufferance due to terminal health condition.

2. Persistent condition of unconsciousness.

3. In the end-stage situation.

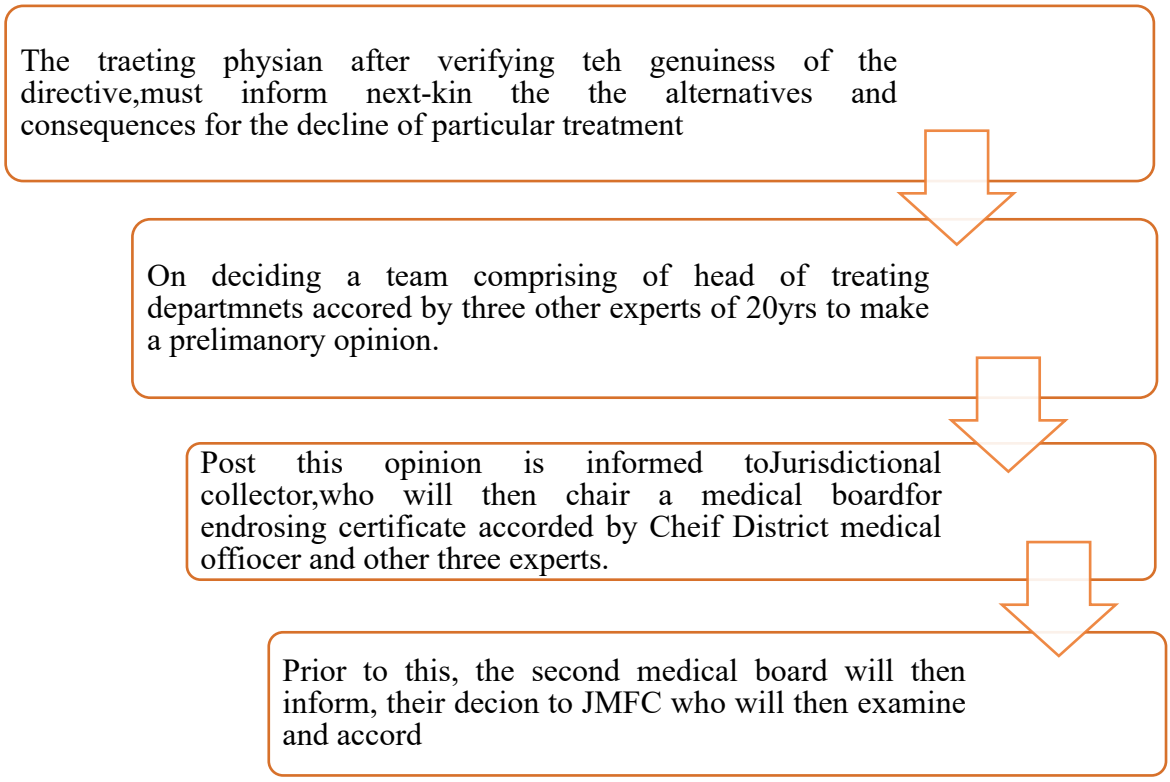
PROCEDURE FOR THE EXECUTION OF DIRECTIVES

- The directive should be signed by executor, accorded by 2 witnesses followed by jurisdictional JMFC

- Witnesses and Jurisdiction JMFC, would then accord their satisfaction, pertaining free consent and knowledge of executor.

- Copies, including digital, shall be stored with JMFC, district court, and local government officer, and shared with immediate family and physician.

GUIDELINES FOR THE IMPLEMENTATION:



CHANGES IN 2023

After a petition has been filed as it's a cumbersome process, the SC reframed guidelines amending the requirement of forming two bords by collector and hospital, it will now be formed by hospital with the doctors of 5yrs experience instead of 20. Further intimation to, magistrate within 48 is the foundation rather than approval. The sign of notary can be substituted with executor.

This depicts the alarming need, for the requirement of legal statue as this is levied on the principle of bodily autonomy, right to life and dignity.[9]

[9] The Constitution of India, 1950, Article 21.

IV. Judicial Pronouncements

In India, there are three significant legal precedents concerning Advance Directives, Euthanasia, and Suicide. In order to conduct a thorough analysis of the jurisprudence in India, it is crucial to comprehend the judgments.

- ***Common cause v. Union of India*** [10]

  Supreme Court determined that according to Article 21, the right to life encompasses the entitlement to the choice to die. Individuals possess the entitlement to die with dignity as an inherent aspect of their right to life. This ruling permits the discontinuation of life-sustaining medical devices for patients who are terminally ill, as well as those with incurable illnesses or who have been in a prolonged state of unconsciousness. In addition, the court granted individuals the right to refuse artificial life support and recognize the importance of creating a living will or other Advance Directives. It recognises the passive ethunasia as well.

- ***P. Rathiram v. Union of India***[11]

  P. Rathinam and Nagbhushan Patnaik challenged Section 309 of the Indian Penal Code. Suicide attempts carry a one-year prison sentence under Section 309. The Supreme Court analogized the right to life under Article 21 to the right to freedom of expression under Article 19, which includes the right to speak and the right to choose not to speak. Thus, Section 309 was invalid.

- ***Gian Kaur v. State of Punjab***[12]

  The Supreme Court ruled that Article 21 of the Indian Constitution gives the "Right to Life and Personal Liberty," but not the "Right to Die" or "Right to Kill," which are against God's nature or order Nobody can expedite death. Therefore, IPC Section 309 does not violate **Articles 21 and 14**. Constitutionally valid. No Indian citizen can be prosecuted for attempting suicide, but anyone who aids and abets will be punished in the best interests of society under Section 306. P. Rathinam vs. UOI was reversed, and

[10] Common Cause v. Union Of India, (2018) 5 S.C.C 1(India).
[11] P. Rathinam v. Union of India, 1994 A.I.R 1844 (India).
[12] Gian Kaur v. State of Punjab, (1996) 2 S.C.C. 648(India).

sections 306 and 309 of the IPC were constitutional, convicting both appellants of suicide abetment.

- ***Aruna Shanbaug v. Union of India***[13]

  Aruna Shanbaug's "next friend" petitioned the Supreme Court to stop feeding her and let her die quietly. Since 1973, when she was sexually abused, Ms. Shanbaug has been chronically vegetative. Three doctors were selected to assess Ms. Shanbaug's physical and mental condition for the Court.

  Ms. Shanbaug was not allowed to withdraw from medical care, but the court exhaustively examined and allowed passive euthanasia. Using Parens Patriae, the Court ruled that it is the last arbitrator of patient welfare. Art. 226 of the Constitution expanded High Court powers.

V. Critical Analysis

5.1 An Alarming Need

Our country has a long history of contextualizing and recognizing Advance Directives, often known as "Living Wills," despite legislative, judicial, and ethical issues. The legalization of passive euthanasia in 'Aruna Shaunbaug v. Union of India', the recognition of privacy[14], and the creation of directives for the recognition of Living Wills all contributed to this paradigm shift in the battle of 'life and death'. The courts, politicians, and society have encountered constitutional confusions, ethical disputes, and religious rages, some of which are still controversial. This section of the study discusses the legal, ethical, and practical issues Living wills faced then and now to comprehend the potential obstacles.

5.2 The Legal Perspective

Article 21 of the Indian Constitution, which guarantees our right to life, encompasses dignity and choice[15]. The judiciary was debating whether this right included the 'right to die' or 'die with dignity'.

[13] Aruna Ramchandra v. Union of India &b Ors. (2011) 4 S.C.C. 454 (India).
[14] K. S. Puttaswamy and Another v. Union of India and Others (2017) 10 S.C.C. 996(India).
[15] Maneka Gandhi v. Union of India (1978) 1 S.C.C 248(India).

As mentioned, the P. Rathinam and Gian Kaur Case's early changing posture did not improve this. Aruna Shanbaug's fight for passive euthanasia legalization fanned the flame. Although this case focused on the best interests of life and death in Persistent Vegetative State without challenging the necessity for Advanced Directive, it led to the 241st Law Commission Report[16]. This paper offered a definitive code for Living Wills and Passive Euthanasia, but legislators feared abuse and misuse[17]. The final decision in this timeline of trying to legalize Advance Directives (ADs)[18] found that a fear of misuse cannot justify a blanket ban, giving comprehensive parameters for Ad validity. This case emphasizes decisional autonomy. Before introducing AD guidelines, the CJI quoted John Rawls from Political Liberalism, emphasizing choice and holding that decisional autonomy triumphs[19] over best interests, bridging the gap in the Aruna Judgement and introducing AD regulations in our country.

The Mental Healthcare Act, 2017's Advance Medical Directive (AMD) is well-codified, yet it relates to mental illness treatments. The rules would encompass additional end-of-life situations and allow people to exercise autonomy in case of incapacity. Recent changes to these guidelines have moved legally burdensome criteria to the healthcare space to streamline AD procedures.[20]

This presentation will demonstrate that the courts have carefully crafted these standards to support future-oriented self-determination and dignity under the constitution. However, the rules' implementation and administration gaps are highlighted.[21]

5.3 The Ethical Perspective:

Both the patient's family and healthcare experts can evaluate these Living Wills ethically. In this context, autonomy, beneficence (the duty to behave in the patient's best interest), non-

[16] LAW COMMISSION OF INDIA, 241, PASSIVE EUTHANASIA- A RELOOK, Aug 2012.
[17] Jayshree Navin Chandra and Mona Dewan, *Advance Medical Directive or Living Will – Decoded'*, Livelaw, 9 Aug 2023.
[18] Ibid
[19] Dhru, K.A. and Ghooi, R.B. (2023) 'Advance Directives in India: Seeking the Individual within the Community', in D. Cheung and M. Dunn (eds.) *Advance Directives Across Asia: A Comparative Socio-legal Analysis*. Cambridge: Cambridge University Press, pp. 110–130.
[20] Khadija Khan, '*What is a living will, and the new Supreme Court order for simplifying passive euthanasia procedure'*, Times of India, 27 Jan, 2023. Available at: https://indianexpress.com/article/explained/explained-law/passive-euthanasia-india-laws-supreme-court-changes-in-living-will-guidelines-8404919/
[21] Nihal Sahu, '*Living wills implementation lags in India',* The Hindu, 4 Apr, 2024. Available at: Living wills implementation lags in India - The Hindu

maleficence (non-harm), and justice provide diverse rationales for ethical problem analysis[22]. A healthcare worker must balance what's best for a patient with the harm that may ensue if their AD refuses. With the new Court standards, they must decide on this complexity of his own commitments while valuing individual autonomy for justice.

Religion posed another ethical dilemma. This author believes self-determination would trump such a problem. The Common Cause judgment also noted that while Buddhism, Jainism, and Hinduism oppose euthanasia, their concepts of the "good death" reflect the idea of dying with dignity.[23]

5.4 The Practical Challenges And Solutions:

The court's ruling in Common Cause appears to have increased decisional autonomy, but its convoluted procedures may disempower patients, diminishing their control over treatment decisions and discouraging AD.

The institutional aspect of AD legalisation is the second worry. India's activist judiciary's Common Cause ruling grants rights without democratic dialogue, raising worries about separation of powers. Implementation is difficult, especially when new law requirements are implemented without considering healthcare feasibility. The legislature and court work differently, therefore the judiciary's idealism rarely becomes ground-level practices. The Health Ministry has not consulted stakeholders on Ads procedure. Health care consultations should be held at every state level for faster implementation.

VI. Conclusion

This paper has endeavored to explore the complete body of discussion around Advance Directives/Living Wills in India. Firstly, a comprehensive evaluation of the definition of the term and its integration in several countries is examined, along with the legal regulations that regulate it in these diverse jurisdictions. In addition, significant cases have been examined to generate credible recommendations for the appropriate execution of Advance Directives in India. The examination of the legal, ethical, and practical difficulties has facilitated the

[22] Robert E Astroff, '*Who Lives, who Dies, who Decides? Legal and Ethical Implications of Advance Directives',* Windsor Review of Legal and Social Issues 1 (1997).
[23] Supra, para. 54.

identification of similar issues.

Furthermore, apart from the delays in implementation and difficulties in decision-making faced by healthcare professionals, as mentioned before, there is also a pressing need for a regulatory framework. As previously said, healthcare, which falls under the State List, needs to be addressed at the same level in order to handle any disputes or concerns relating to redressal. This would ensure more efficient and prompter implementation.

In relation to these Advance Directives, the suggested implementation measures must be included to prevent any misuse of the provision. Any incidents that necessitate significant modifications to the directives should be addressed accordingly. By doing this, Advance Directives, particularly Living Wills, have more legitimacy in India.

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