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Euthanasia - New Guidelines

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Abstract

On dated March 09 2018, the Honorable Supreme Court of India legalized passive euthanasia employing withdrawal of artificial means of life support to patients who are in a permanent vegetative state as a part of the verdict in the Aruna Shanbaug case who was on artificial life support until she died in 2015. After passing the bill on passive euthanasia till date not a single case of euthanasia had been provided in the last four years despite it had been legalized in 2018 because few constraints were there in this act, which the Honorable Supreme Court of India has eased so that patients who require passive euthanasia can be provided.

Keywords: Criterion for euthanasia, Mercy killing, Passive euthanasia, Living will.

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Introduction

Definition of Euthanasia

According to Black's Law Dictionary (8thedition), euthanasia means the act or practice of killing or bringing about the death of a person who suffers from an incurable disease or condition, especially a painful one, for reasons of mercy.[1-4] The word euthanasia simply is the practice of mercifully ending a person's life to release the person from an incurable disease, intolerable suffering, misery, and pain of the life. The term euthanasia was derived from the Greek words "EU" and "Thanatos," which means "good death" or "easy death." It is also known as Mercy Killing.[5]

Criteria for Euthanasia in India ('Living Will' or 'Ichhamaran' or Advance Medical Directives) in past

A document executed by a competent person of sound mind, of his/her own volition & without coercion, about health care decisions to be followed if a person becomes incompetent to make crucial decisions.

Earlier two medical boards were set up one primary and a second review board constituted by the judicial magistrate to know the exact condition of a donor who wants to donate organs.

Earlier, it mandates the experience of doctors on the medical board panel should have 20 years of experience.

Two witnesses are required to testify that the declarant has made his will in sound mind & when in full possession of decision-making faculty in earlier law in force.

Supreme Court of India on March 09, 2018, allowed passive euthanasia of terminally ill patients, saying the right to live with dignity also includes the right to die with dignity.

'Living Will' may be like detailed instructions regarding health care decisions laid out by an individual or it may be a proxy directive whereby a durable power of attorney is delegated to someone else (surrogate decision maker)

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Any person above the age of 18 years can execute a 'Living Will'. It is presumed that a major has the capacity to be dispassionate in thinking about his or her good.

'Living Will', unlike a suicide note, is addressed specifically to the treating physician or next of kin. It documents the dos & don'ts for physicians in the event of terminal illness so that the suffering soul is not trapped in a tattered body. [6]

'Living Will' should include detailed guidelines on situations under which the patient should not be resuscitated or the life prolonged endlessly. This helps in clearing any ambiguity and enhances compliance by the treating physician.[7]

Recording of "Living Will" in past

Witnesses & Judicial magistrate must record their satisfaction that the document has been drawn up & executed voluntarily without any coercion.

In the past, living will or advance directives by a willing person whether has to be put on life support or not made in the presence of two witnesses and countersigned by the jurisdictional judicial magistrate.

- One copy of the 'living will' is preserved in the office of the judicial magistrate & one copy is forwarded to the district court registry.
- Onus of informing immediate family members of 'living will' is on the judicial magistrate.
- One copy also must be handed over to the municipal corporation for their record.

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- One copy of the directive must be handed over to the family physician.

Under Which Circumstances 'Living Will' Implemented? To ensure various checks & balances are put in place, certain criteria need to be met before the 'living will' can be executed.

When a person becomes terminally ill & despite treatment, there is no hope of recovery. When made aware of 'living will', the treating general surgeon must ascertain the genuineness and authenticity of the document from the jurisdictional judicial magistrate before acting upon the same.[8]

Execution of a 'living will' happens only if the medical board grants permission.

In case a patient executes Living, a medical board consists of the head of the treating department and at least three experts from general medicine, general surgery, cardiology, neurology, nephrology, psychiatry, or oncology with at least twenty years of experience.[9]

This board visits the patient in the presence of guardians/ close relatives &forms an opinion to certify or not certify the instructions in the living will. This decision is regarded as a Preliminary Opinion.

- After the hospital medical board certifies that instructions in the 'living will' should be carried out, the hospital has to inform the jurisdictional collector about the proposal.
- Collector shall constitute Another Medical Board comprising the Chief District Medical Officer as chairman and three expert doctors from fields of general medicine, cardiology, neurology, nephrology, psychiatry, or oncology.
- Chairman of the medical board nominated by a collector, i.e., Chief District Medical Officer, conveys the decision of the board to the jurisdictional judicial magistrate before withdrawing medical treatment to the patient.
- Judicial magistrate shall visit the patient at the earliest & after examining all aspects, authorize implementation of the decision of the board.
- In cases where the medical board refuses to grant permission to execute a living will, the immediate recourse available to the family is to approach High Court.
- Chief Justice of the High Court will constitute a division bench to decide upon the case.

Discussion

Changes in Passive Euthanasia

Supreme Court of India on dated January 24, 2022 simplified rules on passive euthanasia to make removal of organs or withholding life support from terminally ill patients. It makes it easy for families of patients and doctors to go ahead with the donation of organs.

Now both boards will be set up by the concerned hospital mandating one nominee registered medical practitioner should be from the district hospital. Both medical boards should have to decide within 48 hours of receiving a written application after making all formalities. Earlier no time limit was there to decide the case so it was taking a very long time to decide, but now it has become time-bound.[9]

Earlier, it also required the consent of a judicial magistrate for conducting passive euthanasia but now a jurisdictional judicial magistrate has to be informed only.

Presently, it requires the experience of doctors on the medical board panel to have a minimum of 5 years of experience.

A living will or advance directives by a willing person, whether has to be put on life support or not, can be attested by a notary of a gazette rank officer.[10]

Conclusion

With these required changes in law both medical boards will be set up by the concerned hospital within 48 hours, the experience of doctors will be reduced to 5 years and living will or advance directives will be attested by the notary or a gazetted officer not in the presence of the judicial magistrate, now it may become easy for the relatives as well as for doctors to go for required passive euthanasia within defined time limits.

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