

AS INTRODUCED IN THE RAJYA SABHA
ON THE 5TH AUGUST, 2016

Bill No. XXVII of 2016

THE MEDICAL TREATMENT OF TERMINALLY-ILL PATIENTS
(PROTECTION OF PATIENTS AND MEDICAL PRACTITIONERS)
BILL, 2016

A

BILL

to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally-ill and for matters connected therewith and incidental thereto

BE it enacted in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Medical Treatment of Terminally-ill Patients (Protection of Patients and Medical Practitioners) Act, 2016.

Short title,
extent and
commencement.

(2) It extends to the whole of India except the State of Jammu & Kashmir.

5 (3) It shall come into force on such date as the Central Government may, by notifications in the official gazette, appoint.

Definitions.

2. Unless, the context otherwise requires,—

(a) "advance medical directive" (also called living will) means a directive given by a person that he or she, as the case may be, shall or shall not be given medical treatment in future when he or she becomes terminally ill and becomes an incompetent patient. 5

(b) "appropriate Government" means in the case of a State the Government of that State and in other cases the Central Government.

'best interests' include the best interests of a patient,—

(i) who is an incompetent patient, or

(ii) who is a competent patient but who has not taken an informed decision, and are not limited to medical interests of the patient but include ethical, social, moral, emotional and other welfare considerations." 10

(c) 'competent patient' means a patient who is not an incompetent patient.

(d) 'incompetent patient' means a patient who is a minor below the age of sixteen years or person of unsound mind or a patient who is unable to,— 15

(i) understand the information relevant to an informed decision about the medical treatment;

(ii) retain that information;

(iii) use or weigh that information as part of the process of making the informed decision; 20

(iv) make an informed decision because of impairment of or a disturbance in the functioning of his mind or brain; or

(v) communicate the informed decision, whether by speech, sign, language or any other mode, as to medical treatment."

(e) 'informed decision' means the decision as to continuance or withholding or withdrawing medical treatment taken by a patient who is competent and who is or has been informed by the attending medical practitioner about:— 25

(i) the nature of the illness,

(ii) any alternative form of treatment that may be available,

(iii) the consequences of those forms of treatment, and 30

(iv) the consequences of remaining untreated.

(f) 'Medical Council of India' means the Medical Council of India constituted under the Indian Medical Council Act, 1956. 102 of 1956.

(g) 'medical practitioner' means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 and who is enrolled on a State Medical Register as defined in clause (k) of that section. 35 102 of 1956.

(h) 'medical power-of-attorney' means a document of decisions in future as to medical treatment which has to be given or not to be given to him if he becomes terminally ill and becomes an incompetent patient. 40

(i) 'medical treatment' means treatment intended to sustain, restore or replace vital functions which, when applied to a patient suffering from terminal illness, will serve only to prolong the process of dying and includes,—

(i) life-sustaining treatment by way of surgical operation or the administration of medicine or the carrying out of any other medical procedure; and 45

(ii) use of mechanical or artificial means such as ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation; and

(iii) but does not include palliative care."

4 of 1875. 5 (j) 'minor' means a person who, under the provisions of an Indian Majority Act, 1875 is to be deemed not to have attained majority.

(k) 'palliative care' includes,—

(i) the provision of reasonable medical and nursing procedures for the relief of physical pain, suffering, discomfort or emotional and psycho-social suffering; and

10 (ii) the reasonable provision for food and water."

(l) 'patient' means a patient who is suffering from terminal illness.

(m) 'terminal illness' means,—

15 (i) such illness, injury or degeneration of physical or mental condition which is causing extreme pain and suffering to the patient and which, according to reasonable medical opinion, will inevitably cause the untimely death of the patient concerned, or

(ii) which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient."

20 3. (1) Every competent patient including minor aged above sixteen years shall have a right to take an informed decision and to express the desire to the medical practitioner attending on her or him:—

Refusal of medical treatment by a competent patient.

(i) for withholding or withdrawing of his medical treatment and to allow nature to take its own course, or

(ii) for starting or continuing his medical treatment.

25 (2) When a patient referred to in sub-section (1) communicates an informed decision to the medical practitioner, such decision shall be binding on the medical practitioner:

Provided that the medical practitioner is satisfied that the patient is a competent patient and that the patient has taken an informed decision based upon a free exercise of his free will and:

30 Provided further that in the case of minor above sixteen years of age, the consent has also been given by the parents, or legal guardian or any next of friends.

35 (3) Before proceeding further to give effect to the decision of the competent patient, the medical practitioner shall inform the patient, if conscious, or the spouse or parent or major son or daughter of the patient or in their absence any relative or other person regularly visiting the patient at the hospital about the informed decision of the competent patient and his own opinion on that decision including the need or otherwise of withholding or withdrawing treatment from the patient and shall desist from giving effect to the decision for a period of three days following the intimation given to the said patient's relations.

40 4. (1) The medical practitioner attending on the patient shall maintain a record containing personal details of the patient such as age and full address, the nature of illness and the treatment being given and the names of spouse, parent or major son or daughter, the request or decision, if any, communicated by the patient and his opinion whether it would be in the best interest of the patient to withdraw or withhold the treatment.

Maintenance of record of Terminally-ill patient.

45 (2) The patient, spouse, parent or major son or daughter of a patient shall be entitled to receive a copy of the records maintained by the medical practitioner under this section and the medical practitioner shall furnish such records upon request without delay.

Palliative care for terminally ill patients.	5. Notwithstanding that medical treatment has been withheld or withdrawn by the medical practitioner in the case of a competent patient or an incompetent patient in accordance with the foregoing provisions, palliative care shall be administered to such patients by the medical practitioner attending on them.	
Protection of competent patients.	6. Where a competent patient refuses medical treatment in circumstances mentioned in section 3, notwithstanding anything contained in the Indian Penal Code 1860, such a patient shall not be deemed guilty of any offence under the Code or under any other law for the time being in force.	5 45 of 1860
Protection of medical practitioners.	7. Where a medical practitioner or any other person acting under the direction of medical practitioner withholds or withdraws medical treatment in respect of a competent patient on the basis of the desire expressed by the patient which on the assessment of a medical practitioner is in his best interest, then, notwithstanding anything contained in any other law for the time being in force, such action of the medical practitioner or those acting under his direction and of the hospital concerned shall deemed to be lawful provided that the medical practitioner has complied with the requirement of sections 3 and 5 and followed the guidelines laid down by the Medical Council of India in this regard under section 12 of this Act.	10 15
Panel of medical experts.	8. (1) The appropriate Government in consultations with The Director-General of Health Services and the Director of Medical Services (or officer holding equivalent post) in each State, as the case may be, shall prepare a panel of medical experts for every state and union territory for the purposes of this Act and more than one panel may be notified to serve the needs of different areas. (2) The panels referred to in sub-section (1) shall include medical experts with an experience of at least fifteen years in various branches such as medicine, surgery critical care medicine or any other specialty as prescribed by Central Government. (3) The panels prepared under sub-section (1) shall be published in the respective websites of the said authorities specified in sub-section (1) from time to time and such modifications shall also be published in the website, as the case may be.	20 25
Permission for withholding/withdrawing medical treatment from High Court.	9. (1) Any parent, spouse, any near relative, next friend, legal guardian of patient, the medical practitioner or para-medical staff generally attending on the patient obtaining the leave of court, may apply to the High Court having territorial jurisdiction for granting permission for withholding or withdrawing medical treatment of an incompetent patient or a competent patient who is incompetent to take informed decision. <i>Explanation.</i> —'High Court' in this section and section 11 means the High Court within whose territorial jurisdiction the treatment is being given or is proposed or proposed to be withheld or withdrawn. (2) Such application shall be treated as original petition and the Chief Justice of High Court shall assign the same to a Division Bench without any loss of time and the same shall be disposed of by the High Court within thirty days: Provided that a letter addressed to the Registrar-General or Judicial Registrar of the High Court by any of the above mentioned persons and containing therein all the material particulars seeking the permission under sub-section (1) shall be placed before the Chief Justice without delay and the letter shall be treated as original petition. (3) The Division Bench of the High Court may, if deemed necessary, appoint an <i>amicus curiae</i> to assist the Court and where a patient is unrepresented, direct legal aid to be provided to such patient. (4) The High Court shall obtain the expert medical opinion of three medical practitioners drawn from the panel prepared under section 8 and any other expert medical practitioner if, considered necessary and issue appropriate directions for the payment to be made towards the remuneration of the experts:	30 35 40 45 50

Provided that as far as practicable, one doctor each on the panel shall be a neurosurgeon, a psychologist and a physician.

(5) The expert panel shall follow the guidelines laid down by the Medical Council of India with regard to withholding or withdrawing of medical treatment to competent or incompetent patients suffering from terminal illness under section 12 of this Act.

(6) The High Court shall, having due regard to the report of panel of experts and the wishes of close relations, namely, spouse, parents, major children or in their absence such other persons whom the High Court deems fit to put on notice and on consideration of the best interests of the patient, pass orders granting or refusing permission or granting permission subject to any conditions.

(7) The parent, spouse, any near relative, next friend, legal guardian of patient who consents to, and the medical practitioner or the hospital management or staff who in accordance with the order of High Court, withholds or withdraw medical treatment to the patient concerned shall, notwithstanding any other law in force, be absolved of any criminal or civil liability with regard to the action taken in accordance with the order or High Court.

10. (1) It shall be open to the party applying for the order of High Court as prescribed in section 9 to withdraw the application anytime before the final decision of the High Court is delivered:

Withdrawing or contesting the application.

Provided that such party shall submit an application to this effect highlighting the reasons and new facts, if any, and the High Court may accept or reject the application of withdrawal.

(2) Parent, spouse, any near relative, next friend, legal guardian of patient, the medical practitioner generally attending on the patient obtaining the leave of the court, may contest the application submitted under section 9 and petition the High Court not to entertain the application or reject the application filed under Section 9, anytime before the final order of the High Court is delivered:

Provided that such party shall submit an application to this effect highlighting the reasons and all relevant facts and the High Court may accept or reject the application:

Provided further that where the High Court accepts this application, the party applying for the order of the High Court under section 9 and the party contesting the application shall be permitted to tender all the relevant evidence and the High Court shall finally dispose of the application along with contesting application within thirty days from the date on which contesting application was received.

(3) The party applying for order of High Court under section 9 shall submit a compliance report to the High Court within thirty days from the date on which the order of the High Court was delivered:

Provided that if, the party fails to comply with the decision of the High Court or if, new facts emerge, such party may apply to the High Court citing the reasons for such non-compliance and the High Court may pass such orders as deemed appropriate.

11. The Division Bench of the High Court may, whenever a petition under section 9 is filed, direct that the identity of the patient and of his or her parents or spouse, the identity of the medical practitioner and hospitals, the identity of the medical experts referred to in section 4, or of other experts or witnesses consulted by the Court or who have given evidence in the Court, shall, during the pendency of the petition, and after its disposal, be kept confidential and shall be referred only by the English alphabets.

Confidentiality.

12. (1) Consistent with the provisions of this Act, the Medical Council of India may prepare and issue guidelines, from time to time, for the guidance of medical practitioners in the matter of withholding or withdrawing of medical treatment to competent or incompetent patients suffering from terminal illness.

Medical Council of India to frame guidelines.

(2) The Medical Council of India may review and modify the guidelines from time to time.

(3) The guidelines and modifications thereto, if any, shall be published on the website and a press release may be issued to that effect.

Advance
medical
directives and
medical power
of attorney.

13. Every advance medical directive (also called living will) or medical Power-of- 5
Attorney executed by a person shall be taken into consideration in matter of withholding or
withdrawing of medical treatment but it shall not be binding on any medical practitioner.

Power to
make rules.

14. The Central Government may, by notification in the official gazette, make rules for
carrying out at the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Following the landmark judgment of the Hon'ble Supreme Court in Aruna Ramchandra Shaunbag vs. Union of India, Law Commission of India in its 241st Report in August, 2012 advocated for legalising passive euthanasia. Passive Euthanasia, also called as negative euthanasia involves withholding of medical treatment or life support system for continuance of life. As opposed to active euthanasia which requires doing something to end a life and which is a crime in India, passive euthanasia involves not doing something which would have preserved a patient's life. These decisions are taken on humanitarian grounds in the best interest of the patient allowing a patient to die a natural death thereby upholding their dignity in death.

The Hon'ble Supreme Court legalised passive euthanasia in the above mentioned judgment and in its wisdom appointed the High Court as *parens patriae* in such cases where a terminally ill patient is unable to give his/her consent and the parents, spouse, relative, friend or medical practitioner attending on him/her applies to the court for withdrawing the treatment. The Bill provides for detailed procedures which can be followed in this regard providing adequate safeguards for the patient and excludes criminal liability of their relatives and medical practitioners who withhold the treatment following the order of the court.

Passive euthanasia today is legalised in many countries and India is no exception. Our Constitution acknowledges the right to life of every person which includes in it the right to live this life with dignity. Legalising passive euthanasia will permit terminally ill patients to live their final days in dignity where any kind of intrusive medical treatment with its attendant side effects is only likely to prolong death and not avert it altogether.

Hence this Bill.

HUSAIN DALWAI

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 14 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only.

The delegation of legislative power is of normal character.

RAJYA SABHA

A

BILL

to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally-ill and for matters connected therewith and incidental thereto.

(Shri Husain Dalwai, M.P.)