Legal and ethical considerations of 'Living Will'

Nagraj Huilgol

Death and dying

Immortality is neither possible nor necessary. Death and dying are inevitable accompaniments of life. Dying, a natural process for many, becomes a nightmare for some.

In recent times the autonomy of the individual (in all its aspects) is gaining importance in the health care system. The natural consequence of this autonomy is the express need and desire of patients to monitor their last days, particularly in the face of incurable disease. In brief, the right to fix the last supper rests with the patient. Advanced directives, assisted suicide and euthanasia are the outcome of these perceived individual rights in life and death.

This article will briefly summarize the definitions, ethical arguments and the law.

'Living Will' or 'ichhamaran'

This is a document executed by a competent person of sound mind, on his/her own volition and without coercion, about the health care decisions to be followed in the event of the person becoming incompetent to make crucial decisions. The 'Living Will' may be in the nature of 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).

Proposed law : 'Living Will' in India

'Living Will' is not yet a legally valid document in India. Dr. B. N. Colabawala has prepared a draft bill on 'Living Will'. It proposes to empower persons above the age of 18 years, in sound possession of mind and not under any duress to execute the will. The bill defines competent person, terminal conditions, attending physician and qualified patient. The bill also defines the conduct of the physician. Voluntarism of both, the physician and the patient is emphasised. The bill seeks legal immunity for physicians acting in accordance with the 'Living Will' act. It also seeks to consider such a death as natural and not suicide. Safety clauses, including penalties for abuse, have been included.

Any person above the age of 18 years can execute 'Living Will'. It is presumed that a major has the capacity for dispassionate thinking about his or her own good. 'Living Will', unlike a suicide note, is addressed specifically to the treating physician or next of kin. It documents the dos and don'ts for the physician in the event of terminal illness so that the suffering soul is not trapped in a tattered body. A '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.

Department of Radiotherapy, Dr. Balabhai Nanavati Hospital, Swami Vivekananda Road, Vile Parle (West), Bombay 400 056

When should life not be supported?

- The draft of the 'Living Will' lists the following situations where advanced directives to stop supporting life can become operational:
- Stoppage of heart function for a period which can result in irreversible damage.
- Severe and, lasting brain damage from any cause.
- Cessation of brain stem function
- Any irreversible or irremediable disease causing severe physical or mental distress which renders one incapable of rationally purposeful and useful existence or when the vital bodily functions are incapable of independent functioning.
- Any form of terminal illness such as malignant cancer, severe immune deficiency disease or advanced degenerative disease of the nervous system leading to vegetative existence.
- 'Living Will' is a very personal document. Hence, the proposed law in cognisance of this accepts any directive which is in consonance with the spirit of the above listed indications.

Directives

The declarant having listed the conditions, also documents the directives. They are to allow the person to die with dignity. This request stems from the correct understanding of human mortality and limitations of existing medical science and technology. To die with dignity is to waltz off the stage without pain, without humiliating sores, without being drenched in smelly secretions, without clutching to a laboured breath which in the normal course would have been the last breath. To die with dignity is to pass off with a smile however emaciated the body. The treating physician should, in compassion, understand the tender feeling of the declarant.

The 'Living Will' instructs the physician to-desist from indulging in any heroic life-supporting treatment such as artificial ventilation, intravenous infusions or nasogastric feeding tubes. The declarant also directs the physician to administer only those medicines, in appropriate doses, which can relieve the person from pain and suffering, even if the administration of the drug shortens life. These directives are deemed sacrosanct and binding unless the patient in sound mind revokes the will. The right to revoke the will, which the declarant can exercise at any time in his life, rests with the declarant.

Safeguards

There are adequate safeguards built into the proposed law to prevent any possible abuse of the provision. Here is an example. Two witnesses are required to testify that the declarant has drawn up his will in sound mind and when in the full possession of decision making faculty. The witnesses are required to declare that they have no claim on any portion of the estate of the declarant upon his/her death.

Binding on physician

The law, when enacted, expects the physician to respect 'Living Will'. The attending physician shall have the right not to comply with the directive if he feels it is against his moral principles. A physician who does not wish to comply is, however, required to make all possible attempts at transferring the care of the declarant to another physician who will respect the 'Living will'.