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END-OF-LIFE DECISIONS

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When the Supreme Court granted legal status to the concept of ‘advance medical directives’ in 2018 and allowed passive euthanasia, subject to stringent safeguards, it was seen as a vital recognition of both patient autonomy over end-of-life decisions and the right to a dignified death. However, doctors later found that some of the specific directions turned out to be “insurmountable obstacles”. In a recent order, a Constitution Bench modified the directions to make them more workable and simple. The advance directive no more needs to be countersigned by a judicial magistrate. Instead, it could be attested before a notary or a gazetted officer. Instead of the magistrate, it is enough if the notary or officer is satisfied that the document is executed voluntarily, without coercion or inducement, and with full understanding. The original guideline that the executor should name a guardian or a close relative who would be authorised to give consent to refuse or withdraw medical treatment, in the event of the executor becoming incapable of a decision, has been modified to name more than one guardian or relative. Instead of the magistrate being tasked with informing family members about the document, in case they are not present at the time of its being executed, the onus is now on the persons themselves to hand over a copy of the advance directive to the guardians or close relatives named in it, as well as to the family physician. It may also be included in digital health records.

The new guidelines require the hospital itself to constitute a primary medical board to certify whether the instructions on refusal or withdrawal of treatment should be carried out. The hospital should also form a secondary board, including a doctor nominated by the district’s chief medical officer, which will have to endorse the primary board’s certificate. The change here is that the district Collector need not constitute the second medical board, as required in the 2018 judgment. The scrutiny by the boards holds good even in cases in which there is no advance directive, but the patient is not in a position to make any decision. The new guidelines also spell out the experience and specialisations of those to be included in the medical boards. While such guidelines are useful and necessary to implement the concept of a ‘living will’ and advance medical directives, it is time Parliament came out with a comprehensive law. Such a law could also provide for a repository of advance directives so that the need to ascertain afresh its genuine nature does not arise at the time of its implementation.

judiciary (system of justice) / laws / death / medicine / hospital and clinic

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