

## SC to frame norms for drafting 'living wills'

A person's advance directive to withdraw medical care to allow him to die with dignity should take effect only when a medical board affirms that his medical condition is beyond cure and irreversible, Chief Justice of India Dipak Misra said on Wednesday.

The Chief Justice, heading a five-judge Constitution Bench, was responding to a debate on when exactly a person's "living will" or advance directive for end-of-life medical care should take effect.

### Informed consent

The Bench said it would lay down guidelines for drafting living wills and how it could be authenticated. It had reserved the case for judgment.

The court is hearing a petition by an NGO, Common Cause, to legalise euthanasia and the concept of living will.

"Advance directives may be approved by a Magistrate. The Magistrate has to examine that the person executing the living will is of sound mind. That he has taken informed consent..." Chief Justice Misra observed.

Justice A.K. Sikri, on the Bench, said a certificate from a statutory medical board that a patient's condition was beyond cure and irreversible would take care of apprehensions of relatives and doctors about withdrawing life support.

### Decision final

"If a man is admitted to a hospital and he goes into a coma, the hospital informs the medical board, which takes a fair, informed and impartial decision that his medical condition is beyond cure. This decision is taken by the medical board on the touchstone of modern technology," Justice Sikri observed.

The Constitution Bench, which includes Justices A.M. Khanwilkar, D.Y. Chandrachud and Ashok Bhushan, suggested framing guidelines for setting up medical boards in every district. The decision of the board would be final and an advance directive should yield to the board's decision.

Justice Chandrachud suggested a two-fold test as to when living will would come into effect.

"One, when the medical condition of the patient has become irreversible. Two, when the prolongation of his life can be done only at the cost of pain and suffering which is at a level inconsistent with his advance directive," Justice Chandrachud observed.

Chief Justice Misra said involving a court in a dispute over living wills would only cause delay, especially when a person is in the hospital.

The government, represented by Additional Solicitor-General P.S. Narasimha, said the legalisation of "advance directives" would amount to the waiving of the paramount fundamental right to life enshrined under Article 21 of the Constitution. Mr. Narasimha said it was opposing the concept of living will as a principle of public policy. It said the State's primary obligation was to sustain life and not legalise a person's wish to die.

"Persons who exercise the right of self-determination [of when to die by withdrawing medical care]

should know that there were many underprivileged persons who may be subjected to abuse if euthanasia and living wills are legalised,” Mr. Narasimha warned.

### **Framing safeguards**

The Bench said it would frame safeguards and procedures for forming medical boards.

The government has already said that passive euthanasia is the law of the land, with thousands of cases in which doctors withdraw life support after getting the informed consent of the relatives. The government pointed out that the Supreme Court itself, in 2011, had issued comprehensive guidelines allowing passive euthanasia in the tragic case of the bed-ridden former Mumbai nurse Aruna Shanbaug.

However, the reference to Chief Justice Misra’s Bench also includes the question whether the Aruna Shanbaug judgment of 2011 had wrongly relied on the Gian Kaur judgment of 1996, which had observed that right to live with dignity also includes right to die with dignity, to approve of passive euthanasia. Even as question about the correctness of the Aruna verdict lies open, the government is finalising a draft law on passive euthanasia called ‘The Management of Patients With Terminal Illness – Withdrawal of Medical Life Support Bill’.

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