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## Supreme Court Allows 'Living Will'

In a landmark judgment delivered on March 9, the Supreme Court of India has allowed an individual to draft a living will specifying that they not be put on life support if they slip into an incurable coma.

The order was passed by a five judge Constitutional bench comprising Chief Justice of India (CJI) Dipak Misra and Justices AK Sikri, AM Khanwilkar, DY Chandrachud and Ashok Bhushan, which said "Human beings have the right to die with dignity."

Though the judges gave four separate opinions, all of them were unanimous that a 'Living Will' should be allowed, because an individual should not be allowed to continue suffering in a vegetative state when they don't wish to continue living, and know fully well that they will not revive. The Apex Court has set forth strict guidelines on how to execute the mandate of the living will.

Four terminologies need to be understood in context of this judgment: Advanced directive, living will, health care proxy and DNR.

**Advance directive:** This is a legal document made when the person is alive and still in possession of decisional capacity about how treatment decisions should be made on her or his behalf if they are no longer able to make decisions for themselves or lose the capacity to make such decisions. Advanced directives are acted upon only when the patient has lost the ability to make decisions for himself. They can be revoked orally or in writing by the patient at any time (so long as he or she has maintained decisional capacity).

Advanced directive is a Durable Power of Attorney for Health Care (DPAHC or Health Care Proxy) and living will.

**Living will:** A living will is a document that summarizes a person's preferences for future medical care including specific interventions such as cardiopulmonary resuscitation (CPR), ventilatory support or enteral feeding. It is a document in which patients give clear instructions about treatment to be administered or state their wishes for end-of-life medical care, when they are no longer able to communicate their decisions. A living will takes effect when the person is terminally ill without chance of recovery, and outlines the desire to withhold heroic measures.

**Health care proxy:** A health care proxy is a person identified by the patient who will take decision with regard to treatment on his/her behalf in case he/she is incapacitated. Simply put, it can be likened to giving "power of attorney" but for medical decisions.

**DNR or Do not resuscitate:** This document applies specifically to cardiopulmonary arrest and not to the current health status, even when the patient becomes progressively more ill. It indicates whether the patient wishes for all efforts to be made to revive him by CPR and to be put on lifesaving ventilator.

The American Heart Association recommends that all patients in cardiac arrest should be resuscitated unless they have a valid DNR order, or in cases where resuscitation is physiologically futile (signs of irreversible death).

A series of workshops and guidelines have discussed end of life choices. It was also discussed at 'End of Life Care' CMAAO meeting in Tokyo, Japan in September 2017. Active euthanasia was given a big 'no' at this meeting, while with regard to withdrawal of ventilation, two options were suggested: either do not put the patient on ventilator or remove the ventilator.

In its Position Statement on End-of-Life Care and Advance Care Planning, the American Medical Association (AMA) advocates that advance care planning become part of routine clinical practice so that patients' wishes and preferences for health care, particularly end-of-life care, are known and met. AMA further says, "The planning process respects the patient's right to take an active role in their health care, in an environment of shared decision-making between the patient and doctor. It may involve family members, religious advisors, friends and other people the patient feels should be involved." However, "an advance directive never takes precedence over the contemporaneous wishes of a patient who has decision-making capacity."

Advance care planning is also considered a routine part of a person's health care in Australia, which allows competent patients the right to make their own decisions involving the withholding and/or withdrawal of life-sustaining treatment.

However, the complete judgment needs to be read to fully understand its implications in practice.

In its judgment in Aruna Shanbaug case, the Supreme Court had permitted passive euthanasia for a patient in permanent vegetative state, provided it had the approval of the High Court.

*"Hence, even if a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned as laid down in Airedale's case (supra). In our opinion, this is even more necessary in our country as we cannot rule out the possibility of mischief being done by relatives or others for inheriting the property of the patient."*

*"132. In our opinion, in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as parens patriae, which ultimately must take this decision, though, no doubt, the views of the near relatives, next friend and doctors must be given due weight."*

The judgment of the Supreme Court does not answer the question as to who will take the decision to withdraw or remove the ventilator if there is no living will.

The current practice (though not legal) is that all legal heirs sign a document for DNR or withdrawal.

**Read the Complete Judgment:** [http://supremecourtofindia.nic.in/supremecourt/2005/9123/9123\\_2005\\_Judgement\\_09-Mar-2018.pdf](http://supremecourtofindia.nic.in/supremecourt/2005/9123/9123_2005_Judgement_09-Mar-2018.pdf)



CHAT WITH DR KK

