



LIVING WILL - POLITY PRELIMS AND GS II MAINS

Q. What does living will entail? What are the challenges associated with its implementation? (10 marks, 150 words)

News: *High Court judge becomes first in Goa to register 'living will'*

What's in the news?

- Justice M S Sonak, who serves on the Goa Bench of the Bombay High Court, became the first person in Goa to register a "living will" – an advance medical directive for his family for when he cannot make his own decisions.

Key takeaways:

Living Will:

- A Living Will or **Advance Medical Directive**, is a document prescribing a person's wishes regarding the medical treatment the person would want if he/she was unable to share his/her wishes or not in a position to make an **informed decision** by reason of being unconscious or in a coma.

	NOW	EARLIER
Living will	An attestation by a notary or a Gazetted officer to be sufficient for a living will	It was necessary that a judicial magistrate attest or countersign a living will
Access to the living will	Living will a part of national health record which can be accessed by Indian hospitals	Living will was kept in the custody of the district court concerned
Primary board to examine patient's condition	Three doctors, including treating physician and two other doctors with five years of experience in the specialty, will comprise the primary board of doctors	Primary board of doctors needs at least four experts from general medicine, cardiology, neurology, nephrology, psychiatry or oncology with overall standing of at least 20 years
Time taken to decide	Primary/secondary board to decide within 48 hours on withdrawal of further treatment	The 2018 judgment did not specify any outer limit on withdrawal of treatment
Secondary board	Hospital must immediately constitute a secondary board of medical experts	The district collector had to constitute the second board of medical experts

Legality of Living Will in India:

- It was **not legally viable in India until 2018.**



- However, the **Supreme Court in Common Cause vs. Union of India (2018)**, recognised that a terminally ill patient or a person in a persistent vegetative state can execute an “advance medical directive” or a “living will” to refuse medical treatment, and gave sanction to passive euthanasia and living will/advance directives.
- The court also laid down principles relating to the procedure for execution of a living will.

Legalization of Passive Euthanasia:

- The Supreme Court had in 2018 legalised passive euthanasia, contingent upon the person having a “living will”, or a written document that specifies the actions to be taken if the person is unable to make their own medical decisions in the future.
- The Supreme Court had **allowed passive euthanasia** while recognising the living wills of terminally-ill patients who could go into a permanent vegetative state and issued guidelines regulating the procedure.

Who can draw up an Advance Medical Directive/Living Will?

- An **adult who is of a sound and healthy mind** and in a position to communicate, relate, and comprehend the purpose and consequences of executing the document.
- It must be **voluntary**.

Elements of a Living Will:

- It should be in **writing and clearly state** when medical treatment may be withdrawn nor if specific medical treatment that will have the effect of delaying the process of death should be given.
- Instructions must be absolutely clear and **unambiguous**.
- It should mention whether the patient may **revoke the instructions/authority at any time**.
- It should **specify the name of a guardian or close relative** who, in the event of the patient becoming incapable of taking decision at the relevant time, will be authorized to give consent to refuse or withdraw medical treatment.

Procedure and Recordings:

- It should be **signed by the patient in the presence of two witnesses**, preferably independent, and **countersigned by a jurisdictional Judicial Magistrate First Class (JMFC)**, so designated by the concerned district judge.
- The JMFC is under an obligation to supply the requisite copies of the Living Will to the concerned authorities and to inform the immediate family members of the Executor.
- When the person becomes **terminally ill and is undergoing prolonged medical treatment with no hope of recovery** and cure of the ailment, the treating physician, when made aware about the Advance Directive, has to ascertain the genuineness and authenticity of the document from the jurisdictional JMFC before acting upon the same.
- The physician of the Executor shall then inform the Executor or his guardian/close relative, inter alia, about the details of the illness and the consequences of remaining untreated.
- The hospital where the Executor has been admitted shall constitute a **Medical Board** to form an opinion on whether to certify the instructions regarding withdrawal or refusal of further medical treatment.
- In case the life support is withdrawn, the same shall be **intimated by the Magistrate to the High Court**, and the High Court shall maintain the requisite records in digital format.



- However, if there is a difference of opinion between the Board and the Executor or his family members, the parties can prefer a writ petition in the concerned High Court. **The decision of the High Court in this regard shall be final and binding.**

Indian States and Living Will:

- Officials said **Goa** is the first state to implement and operationalise advanced medical directives.

Execution of Living Will:

- As per the guidelines, a person who wants to make a living must draft it per the reference format in the presence of two witnesses.
- The will then has to be duly certified by a gazetted officer or a notary, and forwarded to the main Mamlatdar of the taluka, who shall then send it to the nodal officer appointed by the District Collector for safe custody.

Global Status:

- The **Netherlands, Luxembourg, and Belgium** allow both euthanasia and assisted suicide for anyone who faces “unbearable suffering” that has no chance of improvement.
- **Switzerland** bans euthanasia but allows assisted dying in the presence of a doctor or physician.
- **Canada** had announced that euthanasia and assisted dying would be allowed for mentally ill patients by March 2023. However, the decision has been widely criticised, and the move may be delayed.
- The **United States** has different laws in different states. Euthanasia is allowed in some states like Washington, Oregon, and Montana.
- The **United Kingdom** considers it illegal and equivalent to manslaughter.

Significance of a Living Will:

1. Preserving Autonomy:

- A living will empowers individuals to maintain autonomy over their medical care and ensure their personal values and preferences are respected during the final stages of life.

2. Preventing Unnecessary Suffering:

- By specifying their desires, individuals can avoid prolonged suffering and maintain dignity in the dying process.

3. Alleviating Burden on Loved Ones:

- A living will can ease the emotional burden on family members by providing clear guidance, preventing potential conflicts, and ensuring the individual's wishes are followed.

Challenges in Implementation:

1. Ethical Considerations:

- The decision to end life through passive euthanasia raises ethical questions about the sanctity of life and the potential for misuse in vulnerable patients.

2. Legal and Procedural Hurdles:

- While the process has been simplified, navigating legal procedures and ensuring compliance with all guidelines can still be daunting for patients and their families.

3. Awareness and Acceptance:



- There remains a significant gap in awareness among the general population and healthcare providers about Living Wills, their importance, and the process of creating one.
- Moreover, cultural and personal beliefs may influence individuals' and families' acceptance and decision-making regarding passive euthanasia.

4. Lack of Custodians for Living Wills:

- State governments have not designated custodians for living wills.
- For example - a public interest litigation had to be filed in the High Court of Bombay to appoint custodians across the State recently.

5. Absence of Protocol:

- The National Health Authority has not produced protocols that could allow living wills to be authenticated through digital health records.

6. Ambiguous Guidelines:

- Indian law does not have a clear definition for 'next of kin'.
- Further, there is lack of clarity when any family members disagree about the best course of action. Due to all this, officials will refrain from taking decisions on such a sensitive subject.

The Supreme Court's efforts to simplify the guidelines for passive euthanasia and Living Wills represent a significant step towards respecting individuals' autonomy and dignity in end-of-life care. However, addressing the remaining challenges requires continued legal refinement, ethical deliberation, and education to ensure that the rights and wishes of terminally ill patients are honored in a manner that is both respectful and lawful.