

THE KERALA TERMINALLY ILL PATIENTS (MEDICAL TREATMENT AND PROTECTION OF PRACTITIONERS AND PATIENTS) BILL

A bill to provide for the protection of patients and medical practitioners from liability in the context of withholding or withdrawing medical treatment including life support systems from patients who are terminally ill.

BE it enacted in the Fifty Ninth Year of the Republic of India as follows:

1. Short title, extent and commencement.—(1) This Act may be called The Kerala Terminally Ill Patients (Medical Treatment and Protection of Practitioners and Patients) Bill —

(2) It extends to the whole of State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions.—Unless the context otherwise requires,—

(a) 'best interests' means and include the best medical and other considerations like ethical, social, moral, emotional etc., of a patient who is either an incompetent patient or a competent patient but who has not taken an informed decision;

(b) 'competent patient' means a patient who is not an incompetent patient, as defined in clause (c);

(c) 'incompetent patient' means a patient who is a minor or person of unsound mind or a patient who is unable to understand, retain and use the information relevant for making an informed decision about his or her medical treatment and

communicate the same to the Medical Practitioner in any recognized mode;

(d) 'informed decision' means the decision as to continuance or withholding or withdrawing of medical treatment taken by a patient who is competent and who is, or has been informed about all relevant matters like the nature of the illness, alternative form of treatment that may be available and their consequences and the consequences of remaining untreated;

(e) 'Medical Council of India' means the Medical Council of India constituted under the Indian Medical Council Act, 1956 (102 of 1956);

(f) 'medical practitioner' means a medical practitioner registered under the Travancore—Cochin Medical Practitioners Act 1953 or any other corresponding Act in force on the date of Commencement of this Act;

(g) 'medical power-of-attorney' means a document executed by a person delegating to another person (called a surrogate), the authority to take decisions in future as to medical treatment which has to be given or not to be given to him or her if he or she becomes terminally ill and becomes an incompetent patient;

(h) 'medical treatment' means treatment intended to sustain, restore or replace vital functions which, when applied to a patient suffering from terminal illness, would serve only to prolong the process of dying and includes

- (i) life-sustaining treatment by way of surgical operation or the administration of medicine or the carrying out of any other medical procedure and;
- (ii) use of mechanical or artificial means such as ventilation, artificial nutrition and hydration and cardiopulmonary resuscitation;
- (i) ‘minor’ means a person who, has not attained the age of majority as provided in Majority Act, 1875 (4 of 1875);
- (j) ‘palliative care’ includes making of provision for food and water, reasonable medical and nursing procedures for the relief of physical pain, suffering, discomfort or emotional and psycho-social suffering;
- (k) ‘Patient’ means a patient who is suffering from terminal illness;
- (l) ‘terminal illness’ means
 - (i) such illness, injury or degeneration of physical or mental condition which is causing extreme pain and suffering to the patients and which, according to reasonable medical opinion, will inevitably cause untimely death of the patient concerned, or
 - (ii) which has caused a persistent and irreversible vegetative condition under which no meaningful existence of life is possible for the patient.

3. Refusal of medical treatment by a competent patient otherwise than by advance medical direction or directive given through Power of Attorney and its binding nature on medical practitioners.—Every competent patient has a right to take an informed decision for withholding or withdrawing of medical treatment supplied to himself or herself or for starting or continuing medical treatment to himself or herself and when communicated to a medical practitioner will be binding on him:

Provided that the medical practitioner is satisfied that the patient is a competent patient and that the patient has taken an informed decision based upon a proper exercise of his or her free will.

4. Withholding or withdrawing of medical treatment by medical practitioner in relation to a competent patient who has not taken an informed decision and in relation to an incompetent patient.—Subject to the provisions of Section 5 and adhering to the guidelines if any issued under Section 11 by the Indian Medical Council, a medical practitioner may take a decision to withhold or withdraw medical treatment.

- (a) from a competent patient who has not taken an informed decision, or
- (b) from an incompetent patient:
 - provided that the medical practitioner is of the opinion that such action will be in the best interests of the patient after consulting with the parents or relatives of the patient.

5. Expert medical opinion to be obtained by medical practitioner for purposes of Section 4.—(1) No decision to withhold or withdraw medical treatment in respect of patients referred to in Section 4 shall be taken by medical practitioner unless such medical

practitioner has consulted and obtained the opinion in writing of three medical practitioners selected by him from the panel of medical experts referred to in Section 6, who are experts in relation to the illness of the patient and the majority opinion of the experts is in favour of withholding or withdrawing the medical treatment.

(2) Where there is difference in the opinion of the three medical experts, the majority opinion shall prevail.

6. Authority to prepare panel of medical experts for purposes of Section 5.—(1) The Director of Medical Services shall prepare a panel of medical experts for purposes of Section 5.

(2) The panels referred to in sub-section (1) shall include medical experts in various branches of medicine, surgery and critical care medicine.

(3) The medical experts referred to in sub-section (1) shall be experts with not less than fifteen years experience.

(4) While empanelling medical experts on the panels, the authorities mentioned in sub-section (1) shall keep in mind the reputation of the expert and shall exclude from the panel, experts against whom disciplinary proceedings are pending with the State Medical Council concerned or the Medical Council of India and those experts who have been found guilty of professional misconduct.

(5) The panels prepared under sub-section (1) shall be published in the Official Gazette and website of the Government and the panels may be reviewed and modified by the authority specified in sub-section (1) from time to time and such modifications shall also be published in the Gazette and the websites from time to time.

7. Duties of Medical Practitioner.—(1) The medical practitioner who is bound to follow the decision of a competent patient given under Section 3 or who takes a decision under Section 4, shall maintain a record in a register as to why he is satisfied that

- (a) the patient is competent or incompetent;
- (b) the competent patient has or has not taken an informed decision about withholding or withdrawing or starting or continuance of medical treatment;
- (c) the best interests of an incompetent patient or of a competent patient who has not taken an informed decision, require medical treatment to be withheld or withdrawn; and shall maintain record of age, sex, address and other particulars of the patient and as to the expert advice received by him under Section 5 from the three experts selected by him out of the panel referred to in Section 6.

(2) Before withholding or withdrawing medical treatment under Section 4, the medical practitioner shall inform in writing the patient (if he is conscious), his parents or other relatives or guardian about the decision to withhold or withdraw such treatment in the patient's best interests.

(3) A photocopy of the pages in the register with regard to each such patient shall be lodged immediately, as a matter of information, on the same date with the Director of Medical Services of the State and acknowledgement obtained

and the contents of the register shall be kept confidential by the medical practitioner and not revealed to the public or media.

(4) The authority referred to in sub-section (3) shall on receipt of such photo copies, maintain the said photocopies in a register in the offices of the said authority and shall keep the information confidential and shall not reveal the same to the public or the media.

(5) If any person or body including the media violates the mandate contained in clause 4 of this section, such person shall be liable to be proceeded against by way of civil or criminal action in accordance with law.

8. Palliative care for competent and incompetent patients.— Notwithstanding anything contained in Sections 3, 4 and 5 of this Act palliative care shall be provided to all patients by all Medical Practitioner whose assistance is sought for by the patients or their relatives.

9. Protection of competent patients from criminal action in certain circumstances.— Where a competent patient refuses medical treatment in circumstances mentioned in Section 3, notwithstanding anything contained in the Indian Penal Code (45 of 1860), such a patient shall be deemed to be not guilty of any offence under that Code or under any other law for the time being in force.

10. Protection of medical practitioners and others acting under their direction, in relation to competent and incompetent patients.—Where a medical practitioner or any other person acting under the direction of the medical practitioner withholds or withdraws medical treatment in respect of any patient under Sections 3 or 4, such action shall be deemed to be lawful, provided that the provisions in Sections 5, 6 and 7 are duly coupled with.

11. Medical Council of India to issue Guidelines.—(1) Consistent with the provisions of this Act, the Medical Council of India shall prepare and issue guidelines, from time to time for the guidance of medical practitioners in the matter of withholding or withdrawing of medical treatment to competent or incompetent patients suffering from terminal illness.

(2) While preparing such guidelines, the Medical Council of India may consult medical experts or bodies consisting of medical practitioners who have expertise in relation to withholding or withdrawing medical treatment to terminally ill patients or experts or bodies having experience in critical care medicine.

(3) The Medical Council of India may review and modify the guidelines from time to time.

(4) The guidelines and modifications thereto, if any, shall be published in the Official Gazette of India and on its website.

12. Rule making power.—Government may make rules for effectively implementing the provisions of this Act by publishing the same in the official Gazette.

Statement of objects and reasons

It is a well-known fact that certain diseases like cancer are killer diseases for which medical science has not so far succeeded to provide an effective treatment. The terminally ill patients entertain no hope of survival despite the best medical attention and treatment. Many suffer from acute pain unable to eat, drink or sleep with reasonable comfort. Prolonging to be in such cases involves expensive treatment without any positive results. It is not uncommon that some patients wish that it is better to die rather than live a worthless and painful existence. It is in view of the above circumstances that the above Bill has been drafted by the Commission to deal with such cases and subject to expert medical opinion to allow them to put an end to their lives. Built-in safeguards have been provided in the Bill to prevent misuse or of abuse of the provisions contained in the Bill. This Bill is perhaps the first of its kind in India and indeed in Kerala.

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