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CROSS-CULTURAL PERSPECTIVES ON ADVANCE DIRECTIVES: A COMPARATIVE STUDY OF HEALTHCARE DECISION-MAKING IN THE USA, UK, AND INDIA

AUTHORED BY - SRAVYA KONDURI

Abstract:

An Advance Directive is a legally binding document that empowers adults, who have attained a legal age, to predefine their healthcare choices involving end-of-life care. It specifically articulates an individual's healthcare choices for situations in which they may be terminally ill and unable to make decisions due to unconsciousness. It must be in written form, providing clear specifications for when a medical treatment can be halted or when a treatment that only prolongs suffering and indignity should be avoided. This paper explores the ethical and legal significance of advanced directives and its related international conventions, assesses the legal framework Advanced Directives in USA, UK and India and provides recommendations for enhancing the legal framework of Advance Medical Directives in India.

Keywords:
Living Will, Advanced Directive, Healthcare proxy, Individual Autonomy, End-of-Life decisions, Palliative care

I. Introduction:

An Advance Directive[1] is a legally binding document that can be created by any adult who has attained the age of majority. It outlines an individual's healthcare preferences for situations when they are terminally ill and unable to make decisions due to a lack of consciousness. It further provides guidance to healthcare providers on the medical choices to make, on the individual's behalf.

[1] *Advance Care Planning: Advance Directives for Health Care*, National Institute on Aging, available at Advance Care Planning: Advance Directives for Health Care | National Institute on Aging (nih.gov), last seen on 11/11/2023

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An Advanced Directive may include one or both of the following components:

1. **A Living Will**[2]

This outlines an individual's healthcare preferences and treatment choices in advance. It is designed for situations where the individual is incapacitated, such as when they lose consciousness or face a terminal illness. Individuals can express their preferences and refusal for specific medical treatments, including decisions about interventions like mechanical ventilation, cardiopulmonary resuscitation (CPR), and intubation in critical health situations, particularly those involving end-of-life care.

2. **Appointment of a Health-care proxy**[3]

An appointment of a health care proxy is another type of an advanced directive. In this, individuals designate a reliable representative to serve as their healthcare agent, empowered to make medical decisions on their behalf when they are unable to do so due to unconsciousness. This allows the chosen individual to make decisions in the person's best interest, using the individual's established preferences and values as a guiding principle.

An Advanced Directive can be written by any person with a sound mind and a capacity to understand the nature and consequences of their healthcare decisions. They must be of a legal age and should make this decision voluntarily without any undue influence or coercion from others.[4]

II. Ethical and Legal Significance:

1. **Ethical Significance:**[5]

- **Respect for Autonomy**: Advanced directives respect individual autonomy, enabling pre-made healthcare decisions, even when patients cannot communicate.
- **Beneficence and Non-Maleficence:** Advanced directives guide providers to do what is best for patients, promoting ethical principles of beneficence (doing good) and non-maleficence (avoiding harm**).**

[2] Ibid
[3] Ibid
[4] Common Cause (A Registered Society) v. Union of India and Anr, (2023) SCC OnLine SC 99
[5] *Advance Care Planning & Advance Directives*, UW Medicine, available at https://depts.washington.edu/bhdept/ethics-medicine/bioethics-topics/detail/54, last seen on 11/11/2023.

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- **Reducing Moral Distress:** In challenging situations, advanced directives alleviate moral distress for both patients and healthcare professionals by providing clarity on the treatment preferences of the patient.

2. **Legal Significance:**
   - **Legal Validity and Protection:** Advanced Directives are legally binding. They protect individuals from unwanted treatments while also providing legal protection for healthcare providers who adhere to patients' documented wishes.
   - **Regulatory Framework:** Many countries and states have established legal frameworks for advanced directives, which outline the requirements for their creation and implementation.
   - **Informed Consent**: Advanced directives are considered as a form of informed consent, ensuring that individuals make healthcare decisions with a clear understanding of the potential consequences.
   - **Reduction of Legal Disputes:** Advanced directives can help reduce legal disputes and family conflicts by providing clear guidance on a patient's healthcare preferences.

   From an ethical perspective, advanced directives uphold individual autonomy, patient values, and patient-centred care. Legally, they offer a well-defined framework to honour patient wishes, shield healthcare providers, and ensure compliance with the law in healthcare decision-making.

III. International Conventions regarding Advanced Directives:

There is no single international convention or treaty that specifically governs advanced directives or living wills on a global scale. The legal frameworks and regulations surrounding healthcare decisions, including advance directives, tend to be established at the national or regional level, and they can vary significantly from one country to another.

However, some international conventions and guidelines touch on the broader topics related to patient autonomy, medical ethics, and end-of-life care. These conventions may indirectly impact how advanced directives are handled in various countries. Some of these conventions include:

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1. **Universal Declaration on Bioethics and Human Rights[6]:** Adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2005, this declaration sets out principles and guidelines in the field of bioethics. It highlights the significance of respecting the autonomy and dignity of individuals, giving special consideration to the protection of those unable to give consent due to a lack of capacity which is relevant to advance directives.
2. **European Convention on Human Rights and Biomedicine**[7]: This Council of Europe treaty, also known as the Oviedo Convention, addresses various issues related to biomedical ethics, including consent to medical treatment, which can be relevant to advance directives.
3. **World Medical Association's Declaration of Lisbon on the Rights of the Patient**[8]: This declaration outlines principles related to patient rights, including the right to make decisions about medical treatment when the patient is unconscious. While not a legally binding convention, it influences medical ethics globally.
4. **Hague Convention on the International Protection of Adults[9]:** The Hague Convention focuses on providing a legal framework for the international protection and support of adults who may lack the capacity to manage their personal and financial affairs, especially when they have cross-border interests. The convention establishes principles for recognizing and enforcing protective measures and legal appointments in multiple countries to ensure the rights and interests of the protected adult are respected internationally.

IV. Legal Framework of Advanced Directives in United States of America:

In the United States, the legal framework for advanced directives, including living wills and durable powers of attorney for healthcare, is primarily established, and regulated at the state level. Each state in the USA has its own laws and regulations that govern the creation, execution, and recognition of advance directives, so the legal framework can vary from state to state. However,

[6] *Universal Declaration on Bioethics and Human Rights*, UNESCO, available at https://www.unesco.org/en/legal-affairs/universal-declaration-bioethics-and-human-rights?hub=66535, last seen on 11/11/2023
[7] *Oviedo Convention and its protocols*, Council of Europe available at, https://www.coe.int/en/web/bioethics/oviedo-convention, last seen on 11/11/2023
[8] *WMA statement on advance directives (living wills)*, World Medical Association, available at https://www.wma.net/policies-post/wma-statement-on-advance-directives-living-wills/, last seen on 11/11/2023
[9] *Convention of 13 January 2000 on the International Protection of Adults*, HCCH, available at https://www.hcch.net/en/instruments/conventions/full-text/?cid=71, last seen on 11/11/2023

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the Patient Self-Determination Act (PSDA) is a federal law that relates to advanced directives in the context of healthcare facilities that receive Medicare and Medicaid funding.

The Patient Self-Determination Act (PSDA) was enacted in 1990 and requires healthcare facilities to inform patients about their rights to create advance directives and to maintain written policies and procedures for implementing these directives.[10] While the PSDA emphasizes patient education and documentation within healthcare facilities, it does not regulate the specific content or format of advance directives.

Further, the Uniform Law Commission proposed a Uniform Health-Care Decisions Act in 1993 with the aim of creating a single form that could fulfil the requirements of all states as a national law. However, only seven states—Alaska, Delaware, Hawaii, Maine, Mississippi, New Mexico, and Wyoming—have adopted the act, and even in those cases, they have introduced their own variations.[11]

State laws typically prescribe specific legal formalities for the creation and execution of advanced directives. These may include requirements for witnesses, notarization, or specific language to be included in the documents. Many states have specific laws that address end-of-life decision-making, including Do-Not-Resuscitate (DNR) orders and Physician Orders for Life-Sustaining Treatment (POLST) forms, which may be used in conjunction with advanced directives.

Several states mandate various legal procedures for the completion of advance directives. While a standard legal form is often provided as an optional template, it is commonly seen as a good choice. Usually, you only need two adult witnesses to sign a directive, but these witnesses must meet specific qualifications. The named agent, the healthcare provider treating you, and staff at the facility are usually not allowed to be witnesses.

Further, numerous states stipulate that the directive must explicitly cover certain issues, such as nutrition and hydration, in precise terms if the individual intends to authorize their withdrawal.

[10] *The Evolution of Health Care Advance Planning Law and Policy*, National Library of Medicine, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2980344/, last seen on 11/11/23
[11] *Can My Advanced Directives Travel Across State Lines?*, American Bar Association, available at https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue_1_october2016/advance-directives-across-state-lines/, last seen on 11/11/2023.

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In eight states, specific notifications to individuals executing health care powers of attorney are compulsory.[12]

Some states have set limitations on decision-making authority for healthcare proxies, including:

- Living will laws usually require a medical diagnosis, like a terminal condition or permanent unconsciousness, before any action is taken. In twelve states, there is an extra need for a diagnosis before an agent can decide to stop life-sustaining treatments. The complexity of the diagnosis process and documentation varies by state.
- In thirty-three states, there are special rules about when agents, default surrogates, or guardians can decide to stop artificial nutrition or hydration. These rules vary, including situations where default surrogates are completely restricted or when certain medical conditions must be diagnosed beforehand.
- Most states restrict the execution of advance directives if the patient is pregnant.
- In twelve states, surrogates are not allowed to agree to important or controversial medical procedures like sterilization, abortion, or psycho-surgery.[13]

The "portability" principle often allows advanced directives created in one state to be honoured and accepted in other states. However, there may be variations in interpretation and local requirements, so it is advisable to have advance directives reviewed when moving to a different state.[14]

Patients are advised to furnish copies of their advanced directives to healthcare providers to ensure proper documentation. While healthcare professionals routinely review a patient's medical records including any previously provided advanced directives, in critical emergencies, immediate awareness of such directives may not always be possible before administering care.

In situations where patients are unconscious or unable to communicate, healthcare providers may consult with family or friends who are familiar with the patient's directives, given the time permits. To enhance accessibility of crucial information during emergencies, some individuals carry emergency medical cards or wear alert accessories indicating the presence of advanced

[12] Supra 10
[13] Supra 10
[14] Supra 10

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directives. These items often include contact details for the patient's designated healthcare agent or pertinent information.[15]

Additionally, certain states have established registries where individuals can voluntarily register their advanced directives, allowing healthcare providers to verify their existence and content efficiently.

Failure to adhere to advanced directives can result in legal and ethical consequences for healthcare providers and institutions, including potential liability. However, the validity of an Advance Directive relies upon the awareness of the healthcare providers therein.

At its recent 132nd Annual Meeting in Honolulu, Hawaii, the Uniform Law Commission (ULC) approved the new Uniform Health Care Decisions Act, 2023. This updated law has similar goals to the Uniform Health Care Decisions Act from 1993, but it is changed to fit how healthcare is given now, considering new family types, living situations, increased use of electronic documents, and more focus on separate advance directives for mental health care. The Act aims to be better than the 1993 Act based on years of learning about how people make healthcare decisions and the challenges with creating and using advance directives.[16]

V. Legal Framework of Advanced Directives in United Kingdom (England and Wales):

In the United Kingdom, Advanced Directives are often referred to as "Advance Decision to Refuse Treatment" or ‘ADRT.’ The United Kingdom has a unified legal framework to safeguard individuals who lack capacity to make decisions about their own affairs due to mental incapacity or impairment, with the following acts:

- The Mental Capacity Act 2005 governing England and Wales,
- The Adults with Incapacity (Scotland) Act 2000 in Scotland, and
- The Mental Capacity (Northern Ireland) Act 2016 in Northern Ireland.

[15] *MedicAlert*, Wikipedia, available at https://en.wikipedia.org/wiki/MedicAlert, last seen 14/12/2023.
[16] *Five New Acts Approved at ULC's 132nd Annual Meeting*, Uniform Law Commission, available at https://www.uniformlaws.org/discussion/five-new-acts-approved-at-ulcs-132nd-annual-meeting, last seen on 11/11/2023

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The main emphasis of this article is on the Mental Capacity Act 2005, which pertains to the legal framework governing decision-making in England and Wales. The Mental Capacity Act, 2005 is built upon the below five key principles that provide a foundation for decision-making on behalf of individuals who may lack capacity. [17]

- **Presumption of Capacity:** Assume a person has capacity unless proved otherwise.
- **Enablement and Participation:** Do not treat people as incapable of making a decision unless all practicable steps have been tried to help them.
- **Right to Make Decisions (and to Make Unwise Decisions):** A person should not be treated as incapable of making a decision because their decision may seem unwise.
- **Best Interests:** Always do things or take decisions for people without capacity in their best interests.
- **Least Restrictive Option:** Before doing something to someone or making a decision on their behalf, consider whether the outcome could be achieved in a less restrictive way.

The section 24 to 26 of the Mental Capacity Act, 2005 deal with Advance Decisions to Refuse Treatment (ADRT). An "advance decision" is a choice made by an individual, who is 18 years or older and possesses a decision-making capacity. It can include both the specification of treatment preferences and the appointment of a "welfare attorney" (a healthcare proxy) in a single document. It is important to emphasize that the key principle of the Mental Capacity Act presumes that a person has capacity unless proven otherwise. [18]

Advance directives are typically documented in writing, however, they may also exist as witnessed oral statements or notes in patients' medical records, excluding cases where they pertain to refusing life-sustaining treatment.

To be considered legally binding, an advance directive must be clear, unambiguous, and reasonably proximate. It does not apply to life-sustaining treatment unless the individual affirms in writing that it remains valid even in situations risking their life. Moreover, it must be in writing, signed by the individual or someone they have asked to sign on their behalf, and witnessed. An individual possesses the right to modify or revoke (or partial revoke) an advance decision when

[17] *Mental Capacity Act 2005 at a glance*, SCIE, available at https://www.scie.org.uk/mca/introduction/mental-capacity-act-2005-at-a-glance, last seen on 12/11/2023
[18] *S.24 | Mental Capacity Act 2005 | (United Kingdom)*.

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they have the capacity, and this adjustment need not be in writing unless it pertains to refusing life-sustaining treatment.[19]

If an individual has an advance decision and, in the outlined circumstances, a healthcare provider proposes a specific treatment that the person cannot agree to at that time, the suggested treatment should not proceed. Also, when understanding what treatment or circumstances were specified, the decision counts even if it is said in a layman's language.[20]

Validity and Applicability:

Section 25 of the Mental Capacity Act, 2005 deals with the validity and applicability of the Advanced Decisions. An Advance Decision does not apply to a specific treatment if, at the relevant time, the individual has the capacity to either give or refuse consent to it. Also, it affects the responsibility a person may bear for conducting or persisting with a treatment concerning an individual only if, at the relevant time, the decision is both valid and relevant to the specific treatment. [21]

The validity of an Advance Decision is compromised under certain circumstances. It is considered not valid if:

- an individual, at a time when they have decision-making capacity, decides to revoke the decision.
- any actions taken by the individual that clearly go against the enduring nature of the Advance Decision as their ultimate choice.
- after creating the Advance Decision, the individual establishes a lasting power of attorney, granting authority to the designated agent(s) to approve or deny consent for the specified treatment. The existence of any lasting power of attorney other than one mentioned here does not prevent the advance decision from being regarded as valid and applicable. [22]

An advance decision is not applicable to the treatment in question if:

[19] Ibid
[20] Ibid
[21] S.25 | Mental Capacity Act 2005 | (United Kingdom).
[22] Ibid

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- that treatment is not the treatment specified in the advance decision,
- any circumstances specified in the advance decision are absent, or
- there are reasonable grounds to believe that unforeseen circumstances, not anticipated at the time of the advance decision, exist, and would have influenced the individual's decision had they anticipated them.[23]

Healthcare providers are both legally and ethically obligated to act in the best interests of patients, even if the advanced decisions conflict with their personal beliefs or values. They should not delay emergency treatment to look for an advance decision if there is no clear indication that one exists.

Some individuals carry emergency medical information cards, wear medical alert bracelets, or use digital services where their Advance Decision is recorded.[24] These items may contain contact information for the patient's designated healthcare agent or provide other relevant details. The patient or their family members may also inform healthcare providers about the existence of an Advance Decision. The National Health Service in England maintains a Summary Care Record that may also include information about a patient's Advance Decision.

A Court of Protection is established to make decisions on behalf of individuals who lack capacity when disputes or complex issues arise. It ensures decisions are made in the individual's best interests.

Furthermore, Schedule 3 of the Act specifically addresses the International Protection of Adults. The Court of Protection invokes its jurisdiction under the Act when handling cases involving international elements, determining the applicable law in different situations, and facilitating cooperation between authorities in England and Wales and those in other Convention countries.[25]

VI. Legal Framework of Advanced Directives in India:

[23] Ibid
[24] Supra 15
[25] S.63 | Mental Capacity Act 2005 | (United Kingdom)

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In India, there is no dedicated statute specifically for Advanced Medical Directives (AMD) for terminally ill patients. However, the Hon'ble Supreme Court of India issued guidelines for Advance Medical Directives (AMDs), as reported in the judgement of the Common Cause (A Registered Society) v. Union of India and Anr (2018) 5 SCC 1 case. Subsequently, in January 2023, these guidelines were revised. This revision occurred in response to a petition filed by the Indian Society of Critical Care Medicine, citing the complexity of the initially provided guidelines. The guidelines address both the below scenarios where:

- An individual, foreseeing a potential terminal illness creates an AMD (with procedure to execute) and
- A patient with a terminal illness, undergoing extended treatment for an incurable ailment without hope of recovery, does not have an AMD.

Creation of Advanced Medical Directive:[26]

- The Advance Directive can only be created by an adult of sound mind who can comprehend the purpose and consequences of the directive being created. And, it must be done voluntarily, free from coercion or undue influence.
- The Advance Directive should explicitly outline conditions for withholding or withdrawing medical treatment using precise and unambiguous language. It should also designate guardian(s) or close relative(s) to authorize medical decisions if the executor is unable to decide, as outlined in the Advance Directive. Additionally, it should specify that the creator has the authority to revoke the instructions at any point and comprehends the implications of the document.
- The executor should sign it in front of two witnessing individuals, preferably independent, and have it validated by a notary or Gazetted Officer.
- The executor should inform and provide a copy of the Advance Directive to the individuals named in the document, as well as to the family physician, if one is involved. A copy must also be given to the relevant local government authority, be it the Municipal Corporation, Municipality, or Panchayat. These authorities will designate a responsible official to safeguard the document. Additionally, the executor may decide to include their Advance Directive in their digital health records, if such records exist.

[26] Supra 4

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- If there are multiple valid Advance Directives, with none being revoked, the most recently signed one will be considered the patient's last and most current expression of their wishes, and it will be followed.
- An individual can modify or cancel the Advance Directive while they possess the capacity to do so, using the same process outlined above for creating an Advance Directive. The withdrawal or revocation must be in writing.

Implementing AMD:[27]

To implement the decisions stated by the executor in an Advance Medical Directive (AMD) during such circumstances, the below outlined process must be followed:

- Upon notification of the Advance Directive, the attending physician should validate its authenticity by checking the patient's existing digital health records, if accessible, or by consulting the custodian of the document at the pertinent local government authority, whether it is the Municipal Corporation, Municipality, or Panchayat.
- If the attending physician is convinced that the instructions in the document should be followed, they should inform the individuals mentioned in the document. They must explain the illness, available medical care, treatment outcomes, and consequences of not receiving treatment. The physician should ensure the person understands, has considered the choices, and firmly believes that refusing or withdrawing medical treatment is the best decision.
- The hospital, caring for the executor, will establish a Primary Medical Board consisting of the treating physician and a minimum of two subject experts with at least five years of experience. Their goal is to assess the patient's condition alongside their guardian or close relative, aiming to make a recommendation within 48 hours on whether to proceed with the instructions for withdrawing or rejecting additional medical treatment. This decision serves as an initial recommendation.
- In situations where a patient with no hope of recovery is receiving prolonged treatment for a terminal illness, and has no Advanced Directive executed, the physician may inform the hospital. Subsequently, the hospital will establish a Primary Medical Board following the above-described process. This board, in consultation with the patient's family physician and

[27] Supra 4

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next of kin, friend, or guardian, will document the discussions. Throughout, the patient's representative will be briefed on the pros and cons of withdrawing or refusing further medical treatment. With their written consent, the Primary Medical Board may certify the recommended action, ideally within 48 hours. This decision serves as an initial recommendation.

- Upon certification by the Primary Medical Board to follow the Advance Directive or upon receiving the initial recommendation (in case of absence of AMD), the hospital forms a Secondary Medical Board comprising a registered medical practitioner appointed by the District's Chief Medical Officer and two subject experts with a minimum of five years' experience in the relevant field who are not a part of the Primary Board. They assess the patient, and if aligning with the initial decision, they may authorize the execution of the Advance Directive, ideally within 48 hours.[28]
- The hospital caring for the patient will transmit the determinations of both the Primary and Secondary Medical Boards, along with the consent of the individuals designated in the Advance Directive (in case of if AMD exists), to the relevant JMFC (Judicial Magistrate First Class) before executing the decision to discontinue the medical treatment provided to the executor.[29]
- If the Secondary Medical Board rejects the request to withdraw treatment, those mentioned in the Advance Directive, the attending doctor, or hospital staff can file a writ petition under Article 226 of the Constitution to the High Court. In response, the Chief Justice of the respective High Court will form a Division Bench to determine whether to grant or deny approval. The High Court may appoint an independent committee, consisting of three doctors specializing in critical care fields with at least twenty years of experience, to evaluate the case.[30]
- The High Court will promptly hear the application, allowing the State counsel an opportunity to express their views. The High Court is empowered to designate a Medical Board, as per its order, to assess the patient and provide a report on the feasibility of adhering to the instructions in the Advance Directive. It is crucial to underscore that the High Court must

[28] Ibid
[29] Ibid
[30] Ibid

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reach a swift decision in such cases. The High Court should offer explicit reasons for its decision, taking into account the principle of the "best interests of the patient."[31]

- If the Primary Medical Board chooses not to adhere to an Advance Directive during a person's treatment, the individuals specified in the Advance Directive can ask the hospital to send the case to the Secondary Medical Board for review and guidance on the Advance Directive.[32]
- If there are reasonable grounds to believe that circumstances have arisen, unforeseen at the time of creating the Advance Directive, which would have influenced the person's decision had they anticipated them, the Advance Directive will not apply to the specific treatment in question.[33]
- In addition, it is important to address a crucial aspect: when life support is withdrawn, the Magistrate will also inform the High Court. The information will be maintained in digital format by the High Court's Registry, alongside the hard copy, which will be securely disposed of three years after the patient's passing.[34]

Conversely, The Mental Healthcare Act, 2017 allows and outlines the procedure for the execution of advance directives concerning the treatment of mental illness.

VII. Recommendations for Enhancing the Legal Framework of Advance Medical Directives in India:

While the procedures for Advanced Directives vary among the three countries—USA, UK, and India—they share both key similarities and differences. The USA, as a federal state, has individual state laws overseeing the creation, execution, and recognition of advance directives. The United Kingdom possesses a dedicated statute, the Mental Capacity Act 2005, regulating Advanced Decisions to Refuse Treatment, and India relies on issued guidelines for the same purpose. While there is room for enhancing the legal framework in each of these nations, let us concentrate on the areas for improvement in India's legal framework.

1. **Awareness**: There is a lack of awareness among citizens about an option to create an advanced directive and the process to establish it. It is imperative to instruct healthcare

[31] ibid
[32] Ibid
[33] Ibid
[34] Ibid

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providers to offer guidance and raise awareness among patients regarding their right to create advance directives. In the USA, the Patient Self-Determination Act (PSDA) mandates healthcare facilities to inform patients about their rights to establish advance directives and maintain written policies and procedures for their implementation.[35]

2. **Emergency Situations**: The guidelines do not account for emergency scenarios in the implementation of advanced directives. In situations where an individual creates an advanced directive and is admitted to the hospital in an emergency, the current guidelines prioritize preserving life over individual autonomy if resuscitation or immediate ventilator support is required. This approach compromises the intended purpose of creating an advanced directive, favouring only those situations where time is not a constraint.

3. **Timelines**: The objective of drafting an advanced directive is to honour an individual's autonomy and spare them from undesired medical treatments. The existing guidelines, with a 48-hour timeline for obtaining authorization from both the primary and secondary medical boards before forwarding the final decision to JMFC for execution, may subject the patient to unnecessary treatment during these four to five days, contrary to their wishes. There is a need for further simplification in the decision-making process, particularly when a patient has an advanced medical directive, to prevent the defeat of the provision's intended purpose.

4. **Accessibility**: The utilization of digital databases for storing a patient's medical information is not highly advanced in the country and a copy of Advanced Directives is retained by an appropriate local government authority, which appoints a responsible official to ensure the document's protection. The guidelines stipulate that the attending physician must consult the custodian of the document at the pertinent local authority to verify its authenticity, a process deemed to be time-consuming.

   In countries like USA and UK, there are non-profit companies like MedicAlert that maintain a database of members' medical information that is made available to medical authorities in the event of a medical emergency. Members supply critical medical data to the organization and receive a distinctive metal bracelet or necklace tag which is worn at all times. It can be

[35] Supra 10

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used by first responders, such as emergency medical personnel or law-enforcement agents, to access wearers' medical history and special medical needs.[36]

5. **Qualification of Witnesses**: The guidelines should be stringent and unambiguous regarding the qualifications of individuals acting as witnesses during the creation of an Advanced Directive to prevent potential misuse, particularly concerning senior citizens. In many states of the USA, witnesses are required to meet specific qualifications, typically excluding the named agent, the patient's healthcare provider, and facility staff from serving in this capacity.[37]

6. **Capacity**: It is imperative to confirm the mental capacity of an adult with sound judgment during the creation of an Advanced Directive, and this verification should be integrated into the creation process to prevent potential misuse. Implementing a requirement to attach a medical certificate affirming the individual's sound mental state or employing other rigorous processes would be beneficial in averting misuse of this provision.

7. **Revoking or Modification Process**: A patient's preferences may evolve over time, and the patient might not have foreseen their current clinical situation or mental state when initially drafting the directive. Additionally, advancements in medical technology may occur after the directive is drafted. Therefore, the modification or revocation process should allow for spontaneous changes, unless it specifically relates to the refusal of life-sustaining treatment. The existing guidelines specify that the same procedural steps employed in creating an Advanced Directive must be adhered to when revoking an already issued directive.

   Under the UK's Mental Capacity Act 2005, an individual has the right to revoke, amend or partially revoke an advance decision when they possess the capacity to do so. This amendment or revocation need not be in writing unless it pertains specifically to the refusal of life-sustaining treatment.[38]

[36] Supra 15
[37] Supra 10
[38] Supra 18

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8. **Suicide Attempt**: In instances where an individual has executed an Advance Directive to withhold life-sustaining treatments and subsequently attempts suicide, resulting in an end-of-life situation, it is crucial to establish explicit guidelines for healthcare providers. The existing provision, Section 115 of the Mental Health Care Act, presumes that a person attempting suicide is under severe mental stress unless proven otherwise. It further mandates the government to provide care, treatment, and rehabilitation to individuals experiencing severe stress and attempting suicide.[39] Therefore, in these ambiguous situations, clear guidelines are essential to prevent multiple interpretations.

9. **Protection of Health Care Providers**: It is crucial to establish provisions safeguarding healthcare providers from violence, particularly from family members who may disagree with the patient's directives. Also, clear consequences and liabilities should be defined for healthcare providers who deviate from advanced directives based on their personal or ethical beliefs. While there are existing provisions in the Indian Penal Code (IPC) for causing grievous harm[40] and state laws in most states, there is a necessity for specific regulations addressing the protection of healthcare providers against violence and outlining their liabilities when they fail to adhere to advanced directives despite being aware of their existence.

10. **Cross-border implementation**: Comprehensive guidelines are essential for adhering to the advance directives of individuals who have created such directives in other countries and come to India for medical treatment. These guidelines should apply to both non-residential citizens of India and citizens of other countries.

VIII. Conclusion:

Attaining legal recognition for passive euthanasia and validating advance directives marks a noteworthy milestone in India. However, within this juncture of accomplishment, there exists a significant need for the enhancement of laws pertaining to this matter. The current necessity demands the creation of specific legislation or statutes, meticulously designed to furnish precise provisions that address diverse situations. This legislative refinement is essential to mitigate

[39] *S.115, The Mental Healthcare Act, 2017*.
[40] S.325, Indian Penal Code, 1860

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ambiguity and furnish explicit specifications for the guidance of both individuals and healthcare providers.

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