ANNEXURE 2

THE MEDICAL TREATMENT OF TERMINALLY-ILL PATIENTS
(PROTECTION OF PATIENTS AND MEDICAL PRACTITIONERS) BILL, 2006

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 Seventh Year of the Republic of India as follows:

1. Short title, extent and commencement: (1) This Act may be called the Medical Treatment of Terminally ill Patients (Protection of Patients and Medical Practitioners) Act, 2006.
   (2) It extends to the whole of India except the State of Jammu and Kashmir.
   (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions: unless the context otherwise requires,
   (a) ‘advance medical directive’ (called living will) means a directive given by a person that he or she, as the case may be, shall or shall not be given medical treatment in future when he or she becomes terminally ill.
   (b) ‘best interests’ include the best interests of a patient (i) who is an incompetent patient, or (ii) who is a competent patient but who has not taken an informed decision, and are not limited to medical interests of the patient but include ethical, social, moral, emotional and other welfare considerations.
   (c) ‘competent patient’ means a patient who is not an incompetent patient.
   (d) ‘incompetent patient’ means a patient who is a minor or person of unsound mind or a patient who is unable to (i) understand the information relevant to an informed decision about his or her medical treatment; (ii) retain that information; (iii) use or weigh that information as part of the process of making his or her informed decision; (iv) make an informed decision because of impairment of or a disturbance in the functioning of his or
her mind or brain; or (v) communicate his or her informed decision (whether by speech, sign, language or any other mode) as to medical treatment.

(e) ‘informed decision’ means the decision as to continuance or withholding or withdrawing medical treatment taken by a patient who is competent and who is, or has been informed about (i) the nature of his or her illness, (ii) any alternative form of treatment that may be available, (iii) the consequences of those forms of treatment, and (iv) the consequences of remaining untreated.

(f) ‘Medical Council of India’ means the Medical Council of India constituted under the Indian Medical Council Act, 1956 (102 of 1956).

(g) ‘medical practitioner’ means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and who is enrolled on a State Medical Register as defined in clause (k) of that section.

(h) ‘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.

(i) ‘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.

(j) ‘minor’ means a person who, under the provisions of an Indian Majority Act, 1875 (4 of 1875) is to be deemed not to have attained majority.

(k) ‘palliative care’ includes (i) the provision of reasonable medical and nursing procedures for the relief of physical pain, suffering, discomfort or emotional and psychosocial suffering. (ii) the reasonable provision for food and water.

(l) ‘Patient’ means a patient who is suffering from terminal illness.

(m) ‘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 the 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 and its binding nature on medical practitioners:
(1) Every competent patient has a right to take a decision (i) for withholding or withdrawing of medical treatment to himself or herself and to allow nature to take its own course, or (ii) for starting or continuing medical treatment to himself or herself. (2) When a patient referred to in subsection (1) communicates his or her decision to the medical practitioner, such decision is binding on the medical practitioner 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 free exercise of his or her free will.

4. Advance Medical Directives as to medical treatment and Medical Power of Attorney to be void and not binding on medical practitioner:
Every advance medical directive (called living will) or medical power-of-attorney executed by a person shall be void and of no effect and shall not be binding on any medical practitioner.

5. 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:
(1) Subject to compliance of the provisions of section 6, 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 the medical treatment has to be withheld or withdrawn in the best interests of the patient. (2) The medical practitioner shall, while taking a decision under subsection (1), (a) adhere to such guidelines as might have been issued by the Medical Council of India under section 14 in relation to the circumstances under which medical treatment to a patient in respect of the particular illness could be
withheld or withdrawn, and (b) consult the parents or relatives (if any) of the patient but shall not be bound by their views.

6. Expert medical opinion to be obtained by medical practitioner for purposes of section 5:
(1) No decision to withhold or withdraw medical treatment in respect of patients referred to in section 5 shall be taken by any 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 7, who are experts in relation to the illness of the patient and unless 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.

7. Authority to prepare panel of medical experts for purposes of section 6:
(1) The Director General of Health Services, Central Government and the Director of Medical Services (or officer holding equivalent post) in each State shall, prepare a panel of medical experts for purposes of section 6. (2) The panels referred to in subsection (1) shall include medical experts in various branches of medicine, surgery and critical care medicine. (3) The medical experts referred to in subsection (1) shall be experts with not less than twenty years experience. (4) While empanelling medical experts on the panels, the authorities mentioned in subsection (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 subsection (1) shall be published in the Official Gazette of the Central Government or the Official Gazette of the State, as the case may be, and on the respective websites of the said authorities and the panels may be reviewed and modified by the authorities specified in subsection (1) from time to time and such modifications shall also be published in the Gazettes as aforesaid, or on the websites, as the case may be. (6) The relevant panel for selection of experts will be the panel for the
State or Union Territory in which the medical treatment is being given or is proposed or is proposed to be withheld or withdrawn.

8. Medical Practitioner to maintain register and inform patient, parents etc:

(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 5, 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 6 from the three experts selected by him out of the panel referred to in section 7. (2) Before withholding or withdrawing medical treatment under sec 5, 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) Where the patient, parents or relatives stated in subsection (2) inform the medical practitioner of their intention to move the High Court under sec 14, the medical practitioner shall postpone such withholding or withdrawal by fifteen days and if no orders are received from the High within that period, he may proceed with the withholding or withdrawing of the medical treatment. (4) 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 General of Health Services or the Director of Medical Services of the Union Territory or State, as the case may be, in which the medical treatment is being given or is proposed or is proposed to be withheld or withdrawn 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. (5) The authorities referred to in subsection (2) shall on receipt of such photo copies, maintain the said photocopies in a register in the offices of the said authorities and shall keep the information confidential and shall not reveal the same to the public or the media.
(6) The said Authorities may make Rules for the purposes of sections 7 and 8 and publish the said Rules in the appropriate Gazette or on their websites.

9. Palliative care for competent and incompetent patients:
Even though medical treatment has been withheld or withdrawn by the medical practitioner in the case of competent patients and incompetent patients in accordance with the provisions of sections 3, 5 and 6, such medical practitioner is not debarred from administering palliative care.

10. 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.

11. 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, (a) in respect of a competent patient, on the basis of the informed decision of such patient communicated to the medical practitioner for such withholding or withdrawal, or (b) (i) in respect of a competent patient who has not taken an informed decision, or (ii) in respect of an incompetent patient, and the medical practitioner takes a decision in the best interests of the patient for withholding or withdrawal of such treatment, such action of the medical practitioner or those acting under his direction, and of the hospital concerned, shall be deemed to be lawful, provided only where the medical practitioner has complied with the of sections 5, 6 and 8.

12. Enabling provision for seeking declaratory relief before a Division Bench of the High Court:
(1) Any patient or his or her parents or his or her relatives or next friend may move an original petition before a Division Bench of the High Court seeking a declaration that any act or omission or proposed act or omission by the medical practitioner or a hospital in respect of withholding or withdrawing medical treatment from a patient is lawful or unlawful and seeking such interim or final directions from the said Court as they may deem fit.

Explanation: ‘High Court’ in this section and section 13 means the High Court within whose territorial jurisdiction the treatment is being given or is proposed or proposed to be withheld or withdrawn. (2) Any medical practitioner or a hospital may move an original petition before a Division Bench of the High Court seeking a declaration that any act or omission or proposed act or omission by the medical practitioner or the hospital in respect of withholding or withdrawing medical treatment from a patient is lawful and seek such interim or final directions from the said Court as he or it may deem fit. (3) The Division Bench of the High Court may, wherever it deems it necessary, appoint an amicus curiae to assist the Court and where a patient is unrepresented, direct legal aid to be provided to such patients. (4) The Division Bench of the High Court shall dispose of such petitions in the light of the provisions of this Act, after hearing the patient if he or she is competent or hearing his or her parents or relatives or next friend or guardian-ad-litem, the medical practitioners or the hospital authorities treating the patient and the amicus curiae, if any, and after receiving, wherever necessary or appropriate, such further evidence of witnesses including expert medical practitioners. (5) Such original petitions shall be disposed of expeditiously and, at any rate, within a period of thirty days from the date of filing of the original petition.

(6) Where the High Court is of the view that interim or final directions have to be passed and implemented urgently, it may pass such operational orders initially and follow up the same by giving its reasons therefor, soon thereafter. (7) Any declarations or final directions given by the Division Bench of the High Court in a petition filed under subsection (1) or (2) shall be binding in all other actions civil or criminal against the medical practitioner or the hospital, in relation to the said act or omission of the medical practitioner or the hospital, in relation to the said patient. (8) Recourse to the High Court for a declaratory relief and for directions under this section is not a condition precedent
for withholding or withdrawing medical treatment if such withdrawal or withholding is done in accordance with the provisions of this Act.

13. Confidentiality for purposes of sections 12 and 13:

(i) The Division Bench of the High Court shall, whenever a petition under section 12 is filed, direct that the identity of the patient and of his or her parents, the identity of the medical practitioner and hospitals, the identity of the medical experts, referred to in section 6, or of other experts or witnesses consulted by the Court or who have given evidence in the Court, shall, during the pendency of the petition, and after its disposal, be kept confidential and shall be referred only by the English alphabets as stated in clause (ii).

(ii) As soon as the original petition is filed, the Division Bench of the High Court shall make an order choosing English alphabets for identifying the patient, parents, doctors, hospitals or experts or other witnesses referred to in sub clause (i) or other persons connected with the medical treatment and shall direct that in the further proceedings of the Court or in any publications in the law reports or in the print or electronic media or audio-visual media, during and after disposal of the petition, those alphabets alone shall be used to refer to the particular patient, person or hospital and that the identity of the patient, person or hospital shall not be disclosed and the High Court may, where necessary, hold all or any part of the hearing in camera.

(iii) It shall not be lawful for any person or body to refer to the identity of the patient, person or hospital or other particulars or matters referred to in sub clause (i) and (ii) in any law-report or publication in the print or electronic or audio-visual media, and the alphabets designated by the Division Bench of the High Court under subsection (2) alone shall be referred to while publishing the proceedings of the Court, during the pendency of the petition and after its disposal.

(iv) Any person or body acting in violation of the provisions of sub clause (iii) may be held liable for contempt of Court for violation of the orders of Court under sub clause (ii) and be dealt with accordingly.

(v) Notwithstanding the provision of clauses (i) to (iv), when the declarations or directions given by the High Court have to be communicated to the patient, parents,
medical practitioner, hospital or experts concerned, it shall be permissible to refer to the true identity of the patient, persons or hospital and such communications shall be made in sealed covers to be delivered to these addresses so that the declarations or directions made by the High Court are understood and implemented as being with reference to the particular patient.

(vi) The High Court may make Rules of Procedure for the implementation of provisions of section 12 and this section.

(2) No person or body including media shall, in cases which have not gone to the High Court under subsection (1), publish the names of the patients or other information which may disclose the identity of the patient, relatives, doctor, hospital or experts and if these provisions are violated, may be proceeded against by way of a civil or criminal action in accordance with law.

14. 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 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.