ANNEXURE 3

THE MEDICAL TREATMENT OF TERMINALLY-ILL PATIENTS
(PROTECTION OF PATIENTS AND MEDICAL PRACTITIONERS) BILL, 2012

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 Sixty Second 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.
(2) It extends to the whole of India except the State of Jammu & 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 below the age of 16 years 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 of 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 to 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 psycho-social 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 including minor aged above 16 years has a right to take a decision and express the desire to the medical practitioner attending on her or him:-

(i) for withholding or withdrawing of medical treatment to herself or himself and to allow nature to take its own course, or

(ii) for starting or continuing medical treatment to herself or himself.

(2) When a patient referred to in sub-section (1) communicates her or his 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 her or his free will and,

Provided further that in the case of minor above 16 years of age, the consent has also been given by the major spouse and the parents.

(3) Before proceeding further to give effect to the decision of the competent patient, the medical practitioner shall inform the spouse, parent or major son or daughter of the patient or in their absence any relative or other person regularly visiting the patient at the
hospital about the need or otherwise of withholding or withdrawing treatment from the patient and shall desist from giving effect to the decision for a period of three days following the intimation given to the said patient’s relations.

4. Authority to prepare panel of medical experts. (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 this Act and more than one panel may be notified to serve the needs of different areas.

(2) The panels referred to in sub-section(1) shall include experienced medical experts in various branches such as medicine, surgery, critical care medicine or any other specialty as decided by the said authority.

(3) The Director General of Health Services may consult the Directors of Medical Services or the equivalent rank officers in regard to the composition of panel in order to ensure uniformity, as far as practicable.

(4) The panels prepared under sub-section (1) shall be published in the respective websites of the said authorities and the panels may be reviewed and modified by the authorities specified in sub-section (1) from time to time and such modifications shall also be published on the websites, as the case may be.

5. Medical Practitioner to maintain record and inform patient, parent etc. The medical practitioner attending on the patient shall maintain a record containing personal details of the patient such as age and full address, the nature of illness and the treatment being given and the names of spouse, parent or major son or daughter, the request or decision if any communicated by the patient and his opinion whether it would be in the best interest of the patient to withdraw or withhold the treatment. The medical practitioner shall inform the patient if conscious and the spouse, parent or major son or daughter of the patient or in their absence the persons regularly visiting the patient at the hospital about the need or otherwise of withholding or withdrawing treatment from the patient.

6. 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 foregoing provisions, such medical practitioner is not debarred from administering palliative care.

7. 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.

8. Protection of medical practitioners and other acting under their direction, in relation to competent and incompetent patients. – Where a medical practitioner or any other person acting under the direction of medical practitioner withholds or withdraws medical treatment in respect of a competent patient on the basis of the desire expressed by the patient which on the assessment of a medical practitioner is in her or his best interest, then, notwithstanding anything contained in any other law, such action of the medical practitioner or those acting under his direction and of the hospital concerned shall deemed to be lawful provided that the medical practitioner has complied with the requirements of Section 3 and 5.

9. Permission to be obtained from High Court and the procedure. - (1) Any near relative, next friend, legal guardian of patient, the medical practitioner or para-medical staff generally attending on the patient or the management of the hospital where the patient has been receiving treatment or any other person obtaining the leave of court, may apply to the High Court having territorial jurisdiction for granting permission for withholding or withdrawing medical treatment of an incompetent patient or a competent patient who has not taken informed decision.

(2) Such application shall be treated as original petition and the Chief Justice of High Court shall assign the same to a Division Bench without any loss of time and the same shall be disposed of by the High Court as far as practicable within a month,

Provided that a letter addressed to the Registrar-General or Judicial Registrar of the High Court by any of the persons above mentioned containing all the material particulars...
seeking the permission under sub-section (1) shall be placed before the Chief Justice without delay and the letter shall be treated as original petition.

(3) The Division Bench of the High Court may, if deemed necessary, appoint an amicus curiae to assist the Court and where a patient is unrepresented, direct legal aid to be provided to such patient.

(4) The High Court shall take necessary steps to obtain the expert medical opinion of three medical practitioners drawn from the panel prepared under Section 4 and any other expert medical practitioner if considered necessary and issue appropriate directions for the payment to be made towards the remuneration of the experts.

(5) The High Court shall, having due regard to the report of panel of experts and the wishes of close relations, namely, spouse, parents, major children or in their absence such other persons whom the High Court deems fit to put on notice and on consideration of the best interests of the patient, pass orders granting or refusing permission or granting permission subject to any conditions.

(6) The medical practitioner or the hospital management or staff who in accordance with the order of High Court, withholds or withdraws medical treatment to the patient concerned shall, notwithstanding any other law in force, be absolved of any criminal or civil liability.

10. Confidentiality for purposes of section 9. – The Division Bench of the High Court may, whenever a petition under Section 9 is filed, direct that the identity of the patient and of his or her parents or spouse, the identity of the medical practitioner and hospitals, the identity of the medical experts referred to in Section 4, 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.

11. Advance Medical Directives as to medical treatment and Medical Power-of-Attorney to be void and not binding on medical practitioners. –
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.

12. Medical Council of India to issue Guidelines. – (1) Consistent with the provisions of this Act, the Medical Council of India may 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) The Medical Council of India may review and modify the guidelines from time to time.

(3) The guidelines and modifications thereto, if any, shall be published on the website and a press release may be issued to that effect.