VIDHI Centre for Legal Policy

Recommendations for Maharashtra Task Force to Manage Critically Ill Covid-19 Patients by the Vidhi Centre for Legal Policy

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I. Background

Vide Government Order No. CORONA-202/CR58/2020/Aa-5 dated 13 April 2020 the Government of Maharashtra constituted a Task Force to recommend a "Patients Management Protocol for serious & critically ill COVID-19 patients in COVID-19 critical care hospitals" ("**Task Force**"). The terms of reference of the task force *inter alia* include, "a. To establish "patients management protocol for serious and critically ill Covid-19 patients" etc.

This document sets out certain recommendations regarding do not attempt resuscitation orders, end of life care decisions including withholding and withdrawing life-sustaining treatment and triage protocols during pandemics which the Task Force may consider while preparing its own recommendations.

II. Analysis

A. Do Not Attempt Resuscitation Decisions

Cardiopulmonary Resuscitation ("**CPR**") has a key role in reviving patients in the event of cardiac arrest. However, in spite of the best efforts of healthcare practitioners, there are patients in whom CPR may often be non-beneficial and may end up adversely affecting them, including their ability to live with dignity post such interventions. In such instances, it is standard medical practice across the globe to make Do Not Attempt Resuscitation Decisions ("**DNARs**"). These decisions act as a guide to treating physicians not to attempt CPR in the event of cardiac arrest. As guidance by the Resuscitation Council in the United Kingdom puts it,

> *'Anticipatory decisions about CPR were recognised as the way to try to ensure that dying people were not subjected to the trauma and indignity of attempted CPR with no realistic prospect of benefit.'*[1]

The utility of DNARs in avoiding non-beneficial and potentially harmful medical interventions has also been recognised by the the Indian Council of Medical Research. In 2019, the ICMR drafted a position paper and organised a national consultation on DNARs to guide doctors in their decisions

[1] Decisions relating to cardiopulmonary resuscitation, Guidance from the British Medical Association, the Resuscitation Council (UK) and the Royal College of Nursing (3rd edition, 2016).

to perform CPR in the background of illnesses when the chances of survival are low and CPR only increases suffering.[2]

In the context of the Covid-19 pandemic, conducting CPR has a set of unique concerns due to the high risk of infection it poses to doctors and other healthcare practitioners who may be attending to the patient. These concerns get heightened when surges in patient numbers may overwhelm healthcare facilities and lead to shortages in personal protective equipment. Further, the need for post-CPR critical care support when such facilities may already be scarce or overburdened may also have to be factored in.

Keeping these concerns in mind, it is important to come up with a uniform and transparent DNAR protocol which can be relied upon in the management of critically ill Covid-19 patients. This will require objectively identifiable criteria regarding when CPR may be non-beneficial. Additionally, such a protocol should require the treating physician to consult with the patient and/or available near relatives while making such a decision. Communicating with the patient and their families regarding the futility of CPR and the corresponding need for issuing DNARs will contribute in building doctor-patient trust in such situations.

B. Withholding and Withdrawing of Life-Sustaining Treatment

The Supreme Court of India in its 2018 judgement in *Common Cause* v. *Union of India*[3] recognised the legal validity of withholding and withdrawing of life-sustaining treatment for terminally ill patients or patients who are in a persistent vegetative state with no hope of recovery. This was in furtherance of the recognition of the right to die with dignity as a fundamental right and part of the right to life under Article 21 of the Constitution of India. In the absence of any legislation and to ensure safeguards the court laid down guidelines which provide the process of taking such decisions in hospitals.

These guidelines which involve the constitution of boards both by the hospital and district administration have however proven impossible to implement in practice since they are not conducive to the time-sensitive nature of critical care decision making . There is thus an urgent need for State Governments/Central Government to frame alternative guidelines around end of life decision-making which not only fulfill the rights of patients but also respond to the realities of Indian critical care units. This would, however, require legislative intervention.

Until such legislation is passed, and in light of the unprecedented health emergency that we are currently facing, it is important that healthcare establishments come up with protocols around end

[2] Draft ICMR Position Paper on 'Do Not Attempt Resuscitation (DNAR)' Indian Council of Medical Research <http://ethics.ncdirindia.org/PDF/Draft%20ICMR%20Position%20Paper%20on%20DNAR.pdf> (last accessed 17 April 2020).
[3] (2018) 5 SCC 1.

of life care decision-making which are workable and have adequate safeguards so that they do not violate the spirit of the Supreme Court's judgement in *Common Cause*. These guidelines should set criteria for initiating end of life decision-making when the continuation, initiation or escalation of life sustaining treatment is non-beneficial, engage in shared-decision-making with the patient and/or their near relatives regarding such decisions and set up hospitals ethics committees who will weigh in on such decisions.

Guidelines like this have already been framed through a Joint Position Statement of the Indian Society of Critical Care Medicine and the Indian Association of Palliative Care in 2014. These guidelines form the basis of draft guidelines on end of life care released in 2020 by the All India Institute of Medical Sciences ("AIIMS") for public consultation.

In the context of Covid-19 where healthcare infrastructure may be stressed both due to critical Covid-19 patients in addition to the burden of patients who ordinarily require critical care, clarity around decisions to withhold and withdraw life-sustaining treatment is essential. This is not only an ethical imperative but also in consonance with an individual's right to die with dignity.

C. Provision of Palliative Care

The importance of palliative care in critically ill patients cannot be overemphasised. The Supreme Court's recognition of the right to die with dignity stresses the need for continuity of care including pain relief, symptom control and comfort care even if decisions regarding the withholding and withdrawing of life-sustaining treatment have been taken.

In the context of Covid-19 where vulnerable patients such as the elderly and persons with comorbidities are likely to end up in critical care units, it is important that provisions for appropriate and quality palliative care are made. This would ensure that patients continue to receive care in accordance with their rights.

D. Pandemic Triage Protocols

As the pandemic progresses, in the event of an exponential surge in patients requiring mechanical ventilation there is a likelihood that existing health infrastructure will be overwhelmed. While one sincerely hopes that containment measures work and the health infrastructure is adequately ramped up, it is important to prepare appropriate triage guidelines for the allocation of scarce resources. These would be essential if doctors are faced with difficult decisions regarding allocation of life-sustaining treatment.

It is important that such triage guidelines are based on consistent ethical principles and are transparently communicated.[4] In order to be consistent with India's constitutional framework these guidelines should be based on clinically relevant criteria. They should not be arbitrary and should not discriminate against patients solely on grounds such as age and other vulnerabilities such as disability etc.

In arriving at these triage guidelines, non-Covid-19 patients who may require critical care treatment should also be accounted for since limited healthcare resources may have to be distributed amongst both groups of patients.

The well-being of healthcare workers who will be faced with these morally difficult decisions should also be factored in. Appointing clinical ethics committees and/or triage officers to take triage decisions would reduce the burden on attending treating physicians and healthcare workers in such situations.

Lastly, such protocols should be flexible and should respond to the different phases of the pandemic. Different models of decision making may apply to different stages of the pandemic as the number of patients increase and trends in morbidity become clearer. It is therefore important that while the triage criteria must be based on the best available information, it should be specific to existing circumstances and must account for the possibility of changes as the situation evolves.

III. Key Recommendations for the Task Force

DNARs

- Develop protocols on the use of DNARs to guide decisions about CPR in Covid-19 patients.
- Frame criteria to identify when CPR will be non-beneficial in Covid-19 patients.
- Consult with patients and/or available near relatives (where possible) about the use of DNARs. This discussion should ideally take place at the time of admission of Covid-19 patients for care.
- Refer to the ICMR draft protocol on DNARs.

Withholding and Withdrawing Life Sustaining Treatment

- Consider emergency legislative intervention to replace the Supreme Court guidelines on withholding and withdrawing life-sustaining treatment with practical, workable guidelines that.
- Alternatively, develop protocols on withholding or withdrawing life-sustaining treatment that lay down criteria for initiating end of life care discussions, rely on shared decision

[4] For discussion of such allocative principles see, Persad *et al*, Principles for allocation of scarce medical interventions, The Lancet, Volume 373 Issue 9661 (2009) DOI: https://doi.org/10.1016/S0140-6736(09)60137-9

making amongst physicians and/or their near relatives and require clinical ethics committees to participate in such decisions.
- Set up a clinical ethics committee to provide guidance to all hospitals in a city or district (depending upon capacity) that are treating Covid-19 patients.
- Refer to the Joint Position Statement of the Indian Society of Critical Care Medicine and the Indian Association of Palliative Care, as well as the draft guidelines issued by the All India Institute of Medical Sciences on end of life care.

Palliative Care
- Make arrangements for the provision of adequate and quality palliative care for critically ill Covid-19 patients at the end of life.

Pandemic Triage Protocols
- Prepare pandemic triage protocols in anticipation of a surge in patients. In preparing such a protocol, the following factors should be kept in mind:
    - Such a protocol must be based on consistent ethical principles that can be applied on the basis of clinically relevant criteria applicable to individual patients.
    - They should not be arbitrary and should not discriminate solely on the basis of factors such as age, disability etc.
    - Such protocols must also account for non-Covid-19 patients in need of critical care.
    - They should account for the well-being of healthcare workers. Appointing triage officers or ethics committees who can take such decisions is advisable.
    - They must be based on the best available information, must be flexible and should change as per the evolving situation and progress of the pandemic.

Communication
- Prepare clear and simple information in multiple languages for patients about the above protocols, including the rationale underlying them

About the Vidhi Centre for Legal Policy

The Vidhi Centre for Legal Policy ("**Vidhi**") is an independent think tank based in Delhi and Bengaluru doing legal research to make better laws and improve governance for the public good. Vidhi engages with the Government of India, State Governments, the Judiciary and other public institutions to inform policy-making and also to effectively convert policy into law. Vidhi undertakes original legal research, petitions courts on important law and policy issues, and collaborates with civil society, academic institutions and other stakeholders to have a positive impact on governance.

Vidhi's Work on End of Life Care

Vidhi has been associated with issues relating to the end of life care since the past four years, first as an intervener in the Supreme Court of India, asking for the legal recognition of advance directives and second, by playing an active role in engaging with professional medical associations and hospitals to help them think through legal issues. In collaboration with the End of Life Care Taskforce in India (a collaboration of the Indian Society of Critical Care Medicine, the Indian Academy of Neurology and the Indian Association of Palliative Care), it has drafted a model law on end of life care in India. It has also assisted the Indian Society of Critical Care Medicine in filing an application in the Supreme Court to modify its existing guidelines on the withholding and withdrawal of life-sustaining treatment. Vidhi has also advised the All India Institute of Medical Sciences, New Delhi and the Manipal Group of Hospitals on developing an end of life care protocol for implementation. Vidhi Fellow, Dr Dhvani Mehta, was a member of the expert committee appointed by the ICMR on DNAR decisions.

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