

# Digital living wills: the must-have safety net for medical uncertainty

The new estate-planning tool helps individuals specify medical treatment preferences in case of incapacitation

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When a 57-year-old woman in Bengaluru was diagnosed with cancer a few years ago, the possibility of entering remission prompted her to think practically about life ahead. Her elder daughter lived in the US, while her younger daughter was in India, pursuing a career in medicine.

Recognizing that a medical emergency could leave her daughters in a state of helplessness, she drafted a living will, establishing a clear medical line of command. The woman, who does not wish to be identified, nominated her medically trained daughter as the decision-maker to help ease guilt for the family.

Estate planning in India has focused on securing one's legacy by distributing real estate, fixed deposits and other assets to the next generation. But a silent yet painful crisis sometimes emerges in hospitals before a death certificate is issued.

When an individual becomes medically incapacitated, families are abruptly thrust into making high-stakes medical decisions. These moments can spiral into immense emotional trauma, family friction and even financial issues.

To bridge this gap, a legal and technological alternative is gaining traction: digital living wills that allow one to state the medical treatment they want or do not want if incapacitated. Read on to understand the mechanics, legal guardrails, costs and risks of a digital living will, with insights from will and estate-planning experts, lawyers and financial planners.

## What is a digital living will?

"A living will is a written legal document that acts like an advance directive to specify the type of medical care that an individual does or does not want," said Germaine Pereira, a partner at Solomon & Co, a law firm in Mumbai. "It specifically states the type of medical care that an individual should have in the future, in case he is unable to do things himself... While a standard will remains dormant till the person passes away, a living will operates strictly while the individual is still alive but lacks the cognitive or physical capacity to communicate their choices."

It addresses scenarios such as being placed on ventilator support, in a persistent vegetative state, or navigating the terminal stages of an irreversible illness where aggressive resuscitation provides no real benefit.

It can also come in handy in situations such as in the case of a 51-year-old unmarried woman in Bengaluru, who is an only child caring for an elderly mother. The woman, who does not wish to be identified, realized that she lacked immediate family mem-

## Digital living wills: all you need to know

Digital living wills can secure medical autonomy and protect family from emotional and financial trauma. This guide covers steps, costs and risks.

### What is a digital living will?

- ▶ Legal document stating the medical care one wants or does not want if they are incapacitated.
- ▶ Operates while one is alive but unable to communicate.
- ▶ Main goal is to unburden the family from guilt and hefty or futile medical bills.



### Who should consider creating one?

- ▶ Individuals whose family members are scattered across different countries.
- ▶ Those without immediate family can place the power with other families.
- ▶ Those with pre-existing conditions or potential terminal illness relapses.

### How to draw up a digital living will



**Write your terms with precision.**



**Physical copy signed with two independent witnesses.**



**Document notarized or signed before a gazetted officer.**



**Submit the copy to a magistrate or municipal corporation.**



**Digital upload:** In Maharashtra, upload the document directly to MahaULB portal.

### Cost breakdown

Mumbai:	<b>₹7,000-10,000</b>
Other Tier-1 cities:	<b>₹5,000-7,000</b>
Tier-2 or 3 Cities:	<b>Over ₹10,000</b>

Source: 1 Finance, Mint Research

### Disadvantages and risks

- ▶ Useless if the digital living will is not accessed in time
- ▶ Fewer real-world cases of implementation.
- ▶ Directive collapses if decision-maker dies or migrates.

bers, so named a couple of her cousins in her living will.

"While one is hale and hearty, one can write that if they have to put on a ventilator, or have an autoimmune disease, or diseases like cancer, where the treatment is not going to be fruitful, there is no point in resuscitation. Then they are unburdening their family from taking that guilt, and relieving them of the financial burden," explained Shradha Nileshwar, head of will and estate planning at 1 Finance, a personal advisory firm.

### Who should have a living will?

While countries such as the US have long utilised such medical directives due to fragmented family structures, the demand in India is being driven by changing family dynamics and growing awareness.

A digital living will also helps those in specific situations of elevated risk. For instance, a 42-year-old man in Delhi, a divorcee with an 18-year-old daughter. Not intending to remarry and given that Indian law does not give a non-relative

partner medical standing, he drafted a living will naming his daughter and elder brother to ensure his family held the authority. Beyond these cases, financial planners emphasize that double income, no kids (DINK) couples and individuals with pre-existing conditions are vulnerable if they do not draw up a living will.

### Preparing a digital living will

Given that living wills involve the potential withdrawal of life-sustaining treatment, the legal protocols are structured to prevent premature execution. "The Hon'ble Supreme Court of India in *Common Cause (A Regd. Society) v. Union of India*

has laid down detailed procedural safeguards with the object of preventing misuse and ensuring the authenticity and lawful implementation of living wills," said Manmeet Kaur, a partner at Karanjwala & Co. According to Kaur, individuals must navigate various stages of compliance and draft the document with clarity so that medical professionals can implement decisions

strictly in accordance with the patient's terms.

As detailed by Pereira, the physical draft must be signed in the presence of two independent witnesses. It must then be legally notarized or signed before a gazetted officer or a notary public. The authenticated copy must be submitted to the local authorities such as a local magistrate or municipal corporation.

In Mumbai and the rest of Maharashtra, the state has launched a dedicated module for living wills on the MahaULB portal. One can upload their notarized advance directives online. Municipal commissioners are appointed as the legal custodians of these files.

If a patient is incapacitated, a primary medical board constituted by the treating hospital must review the case. Following this, a secondary medical board set up by the district medical officer must independently confirm that the patient's condition is terminal and irreversible.

"If there is even a 0.1% chance that the patient can make it, then they will not bring in this will," Nileshwar said.

### How much does it cost?

According to Nileshwar, in Mumbai, the cost ranges from ₹5,700 to

₹10,000. In other tier-1 cities, the prices can be lower at ₹5,000 to ₹7,000 as digital upload systems are not easily available. In the smaller cities, it can be more expensive, often crossing the ₹10,000 mark due to the lack of local legal familiarity or limited legal specialists.

### Emerging trends

"I have a lot of clients, the younger crowd, people between the ages of 45 and 55 coming to us to make their living wills," noted Pereira. This trend is driven by frequent business travel, unprecedented global circumstances and individuals managing minor children or dependents with special disabilities.

Vishal Dhawan, a certified financial planner and CEO, Plan Ahead Wealth Advisors, said cross-border family setups are a major reason. "Awareness is most often coming because people have families overseas, and an advance medical directive is a commonly used succession tool internationally. This route is where a lot of them actually come to know about it."

### Disadvantages and risks

Despite the moral and emotional benefits, the implementation of digital living wills in India faces some issues that one must be mindful of. The digital advantage is currently localized. While Maharashtra's MahaULB system offers a blueprint, it lacks cross-border functionality.

"There is a need for a nationwide infrastructure and support for living wills," said Kaur. "A living will in the database of Maharashtra may not be readily available for healthcare providers in a different state."

If an individual travels outside their home state, localized hospital systems may be unable to verify or access the directive.

Pereira raises critical concerns regarding unauthorized access to personal data. Further, the inability to locate the file makes the document useless during a medical crisis. Dhawan also calls for caution.

"In the initial stage that we are at right now, there isn't enough testing of this that has happened, so you don't know how well a living will will work. While there is a documented process, there aren't enough cases already where one has actually seen a living will being implemented," he stated.

A living will is highly dependent on the availability of the designated proxies. If an individual names specific decision-makers but fails to update the document if those proxies pass away or migrate unexpectedly, the entire directive collapses.

While a regular will remains an absolute, non-compromisable necessity, a living will is more of a precautionary parallel.

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