

March 12, 2026.

Press Release

## **Supreme Court's Verdict in *Harish Rana v Union of India***

### **Background**

Harish has been in a permanent vegetative state for the last thirteen years, receiving clinically assisted nutrition and hydration (CANH) through a PEG tube.

His parents had made an application to the Supreme Court, requesting medical experts to assess his condition and determine whether continuing to provide CANH would be in his best interests. Their application requested the Court to apply its own guidelines in *Common Cause v Union of India* laid down in 2018 and later modified in 2023.

The *Common Cause* guidelines require two sets of Medical Boards (comprising three doctors each) to:

- a. determine whether a patient is terminally ill or in an otherwise irreversible condition like a permanent vegetative state; and
- b. assess whether the provision or continuation of life-sustaining treatment would be in their best interests.

Once such a decision is taken, in consultation and with the consent of the patient's next of kin, life-sustaining treatment may be withdrawn.

### **What the Court Said in *Harish Rana's* Case**

Justices JB Pardiwala and KV Viswanathan recognized that the *Common Cause* guidelines applied to Harish's case. Taking into account the opinions of the two medical boards set up under their directions, the family's expressed preferences, and Harish's best interests, they held that life-sustaining treatment can be withdrawn in this case, and shall be accompanied by the provision of appropriate palliative and end-of-life care.

### **General Legal Principles**

Some of the key aspects of the Court's judgement are:

- A competent individual has an unconditional right to refuse medical treatment, grounded in the fundamental right to autonomy and privacy. Advance medical directives are an expression of this right.
- Where a patient lacks decision-making capacity, their right to bodily integrity and dignity requires a decision to be made in their best interests.

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- Best interests is a holistic evaluation of medical considerations as well as emotional, social, and psychological factors. It also must be considered on a case-by-case basis.
- It affirmed a fundamental distinction between 'active' and 'passive euthanasia'. The former is currently illegal and is an action (usually a lethal injection) taken with the intention of causing death. Importantly, the Court favoured the use of 'withholding/withdrawal of life-sustaining treatment' over passive euthanasia.

### **What this Means for the Healthcare Community**

The Court cautioned healthcare professionals against legal wariness at the expense of the dignity of patients. All medical treatment requires a continuous evaluation of the benefit that it is serving, especially in the context of life-sustaining treatment, to patients who are terminally ill, in a permanent vegetative state, or in like conditions.

The Court recognized that clinically assisted nutrition and hydration is a form of 'medical treatment', even when administered at home by an informed lay person, and should be administered in accordance with medical protocols. It should be withdrawn when it does not confer any therapeutic benefit, keeping in mind the 'best interests' of the patient. The next of kin/next friend/guardian/designated healthcare representative (if an advance medical directive exists) may admit the patient to a hospital of their choice, or alternatively approach a hospital for the limited purpose of designating a primary treating physician, who may then initiate the process in accordance with the *Common Cause* guidelines.

Best interests must be determined through consultations with next of kin or designated healthcare representatives (nominated in advance medical directives), and the patient and their dignity should be placed at the heart of the decision.

The Court has also frowned upon the abandonment of patients by healthcare facilities after withdrawal of medical treatment, where families and caregivers are not provided appropriate closure. Such abandonment encourages practices like "discharge against medical advice", which opposes the prioritisation of structured palliative and end-of-life care that the court is proposing in the judgment.

### **Directions for Government**

The Court has clarified the *Common Cause* guidelines to ensure that they are practically workable. A direction has been issued to State Governments to ensure that Chief Medical Officers maintain a panel of registered medical practitioners who can serve on

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the Secondary Medical Board, which will be involved in taking decisions about withholding or withdrawing life-sustaining treatment.

The Union Government has been urged to enact comprehensive legislation that addresses end-of-life decisions.

**We welcome the Court's sensitive and humane judgement, grounded in constitutional values and fundamental legal principles regarding the duty of care that doctors owe their patients. Doctors have always had a duty to act in the best interests of the patient, which also means not offering medical treatment that serves no benefit. The judgement does not 'legalise' euthanasia, but rather applies the *Common Cause* guidelines to Harish Rana's case.**

**The judgement positively requires the provision of palliative and end-of-life care in the event of withdrawal of life-sustaining treatment, and goes so far as to say that a structured plan for this should be in place. This paves the way for advance care planning, which involves discussions between treating teams, patients and their caregivers about the goals of care.**

**We urge the judgement to be implemented in the spirit that animates it, i.e. of compassion to patients and the overarching duty to act ethically. We trust that State Governments will take the necessary steps to operationalise the guidelines and that the Union Government will consider enacting legislation that can comprehensively address the issue.**

*This statement is issued by Advance Care Planning- India (ACP- I), a collective of medical, legal, and public health experts, from organisations like the Vidhi Centre for Legal Policy, Pallium India, and Nivaraana. We specifically acknowledge three independent members of the collective, Dr. Savita Butola, Dr. Roop Gursahani and Dr Rajani Bhat, who have been instrumental in their support to Harish's family. Dr. Raj Kumar Mani's support to the family, as well as the guidance offered by Dr Rajinder K Dhamija and Dr Naveen Salins, has been invaluable. We also acknowledge the support provided to the family by Zahver Chowdhury and the Taj fraternity.*

*Advocate-on-record (AOR) Rashmi Nandakumar, Adv. Anindita Mitra, Adv. Yashmita Pandey, Adv. Manish Jain, and from the Vidhi Centre for Legal Policy, Adv. Dhvani Mehta, Rituparna Padhy, and Adv. Shivani Mody, represented Harish and his parents in Court.*

*The outcome in this case builds on years of grassroots work and advocacy carried out by many individuals and organisations dedicated to medical ethics and palliative care, including CanSupport, Karunashraya and Dr Nagesh Simha, Dr MR Rajagopal and Dr Suresh Kumar and the Institute of Palliative Medicine.*