Polity & Governance · GS - II

What is meant by judicial legislation ? In this context, discuss the verdicts of the apex court allowing “passive euthanasia” and a “living will”.

EXAM YEAR	PAPER	SUBJECT
2026	GS - II	Polity & Governance

MARKS	WORD LIMIT
15	~250 words

Answer Hint

Judicial legislation, judicial creativity, Article 21, right to die with dignity, Common Cause judgment 2018, passive euthanasia, living will, safeguards, separation of powers

Model Answer

Judicial legislation refers to situations where courts, while interpreting the Constitution or statutes, lay down new legal principles or detailed guidelines that effectively fill legislative gaps. It is distinct from ordinary judicial interpretation, though the two may overlap in constitutional adjudication.

In Common Cause v. Union of India (2018), the Supreme Court recognised that the right to die with dignity forms part of Article 21. It permitted withholding or withdrawal of life-sustaining medical treatment under strict safeguards. The Court also recognised an advance medical directive, popularly called a “living will”, through which a competent person can record preferences regarding future medical treatment when they become incapable of communicating. The framework included safeguards such as medical boards and procedural scrutiny to prevent coercion or misuse.

The judgment illustrates judicial creativity because Parliament had not comprehensively legislated on end-of-life medical decisions. The Court therefore sought to reconcile individual autonomy, dignity, medical ethics and protection of vulnerable persons.

The 2026 Supreme Court judgment in Harish Rana v. Union of India reaffirmed the substance of the Common Cause framework while replacing the potentially confusing term “passive euthanasia” with “withholding or withdrawing of medical treatment”. It retained the requirement that such decisions must satisfy the “best interests

of the patient” principle and applicable safeguards.

Thus, judicial legislation can protect constitutional rights where legislative gaps exist, but it should remain anchored in constitutional text, precedent and institutional restraint. Long-term regulation of ethically sensitive issues should ultimately receive a comprehensive legislative framework.

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