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Health as Human Right-Role of Court in Its Realisation

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Numerous international covenants recognise health as a human right and thereby oblige the countries party to such covenants to ensure good health of their citizens. The Directive Principles of State Policy contained in Part IV of the Indian Constitution requires the Indian State to protect the health and strength of the people and to provide public assistance in cases of old age, sickness and disablement. The Indian Supreme Court has laid down in numerous decisions[1] that the fundamental right of life and personal liberty enshrined in Article 21 of the Constitution derives its "life breath" from the said Directive Principles and includes within its import the right to live with human dignity and hence the minimum requirements, such as good health, that must exist in order to enable a person to live with human dignity. Health as a human right is therefore implicit in the fundamental rights guaranteed under Article 21.

The implication of reading the human right of health into Article 21 is that it becomes the constitutional obligation of the Supreme Court under its original writ jurisdiction conferred by Article 32 and of the High Court under its original writ jurisdiction conferred by Article 32 and of the High Court under its original writ jurisdiction conferred by Article 226 to secure the enforcement of such human right by issuing a writ or a direction or order in the nature of the five traditional writs against the State if the latter fails to discharge its constitutional function of realising good health of the people. Article 142 of the Constitution supplements the extensive powers of the Supreme Court by enabling it to pass any decree or order as is necessary for doing complete justice in any cause or matter pending before it. Article 144 mandates all authorities, civil or judicial to act in aid of the supreme court.

While the task of securing good health of all people is no doubt a monumental exercise, the State in India has done little to ameliorate the situation and has done that well. Since the evolution of the remedial jurisprudence of Public Interest Litigation (P.I.L.) in India in 1979 with the Undertrial prisoners case[2], the Supreme Court and the High Courts have sought to secure accountability for state in action and administrative sclerosis in a large number of P.I.L. pertaining to health related issues. P.I.L. is a non Anglo-Saxon and non adversarial litigation[3] whereby the Court, the Petitioner and the state collaborate to provide remedies for social wrongs affecting fundamental rights of citizens, particularly the disadvantaged sections of society, who due to social, economic or other disability, do not have access to the Courts. The Supreme Court is competent to entertain P.I.L. only to the extent it is necessary to enforce fundamental rights. The writ jurisdiction of the High court is wider in the sense that it can entertain P.I.L. for the enforcement of any legal right. In a P.I.L. action, the court transcends the traditional judicial function of adjudication and functions as a social reformer, investigator, monitor, policy maker or ombudsman in its attempt ot discharge its constitutional role of enforcing fundamental or legal rights, as the case may be.

The first health related P.I.L to be filed in the Supreme Court was the case of **Workmen of Slate Pencil Manfacturing Industries** v. **State of Madhya Pradesh** (Civil Writ Petition No. 5143 of 1980). This P.I.L. pertained to the death of workers at a young age in the slate pencil manufacturing industries due to accumulation of soot in their lungs. The Court required the State to ensure installation of safety measures in the concerned factories failing which it could close down the same. Similarly, a P.I.L.[4], which was filed in 1982 in the Supreme Court on the basis of an United Nations Development Programme report stating that due to lack of iodine in diet 60 milliion people in India are suffering from goitre and another 300 million are potential victims, resulted in the Court

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successfully requiring 18 states and the then Union Territory of Delhi to produce iodised salt.

It will be readily agreed that notwithstanding such interventionist approach by the court, the position in respect of the health of the impoverished millions in India continues to be pitiable. While the court may not be the best forum for formulating remedies for socioeconomic maladies nor the substitute for executive efficiency, it is the last resort because of lack of executive efficiency. Be that as it may, the attempt of the court to deliver concrete relief often gets frustrated by the failure of the State to implement its directions or by it adopting delaying tactics and cover-up operations. This position gets aggravated by the institutional limitations of the Court itself. Despite the oft-repeated declaration by the Supreme Court that P.I.L. has come to stay, the Court lacks a formal and extensive infrastructure to actually monitor the implementation of its directions - and anyone familiar with Indian bureaucracy will know that if the court does not play an active role in ensuring the implementation of its directions, its orders will soon be reduced to pious exhortations. The court simply has to assume a supervisory role in curing institutional malaise and consequently perform administrative functions though only to the extent it is necessary to secure the ends contained in Articles 32 and 226 of the Constitution. Let us consider a few P.I.L. cases which underscore the need of the Court to do so.

In 1985, a P.I.L.[5] was filed in the Supreme Court on behalf of about 7000 lepers in Delhi pleading for their medical aid and rehabilitation. The lepers were dying from starvation and if they chose to beg, they were picked up, tortured and beaten by the police. With the repeal of the Lepers Act 1898 with effect from 2.6.1984 and no welfare legislation for lepers, the State simply ignored the problem. Some lepers got two bandages a month to cover their open wounds under the National Leprosy Eradication Programme while most got none. The medicines and treatments, including the life saving drug Dapsone and the Multi Drug Therapy, were not available. The Suupreme Court, by its Order dated 9.9.1985, suggested to the Law Commission nd the Central Government that a suitable legislation be made for medical treatment and rehabilitation of lepers - a suggestion which was simply ignored. Since out of 4 million lepers worldwide, 3 million were in India, the Court permitted the impleadment of the other States in the P.I.L. and directed the Union of India and the Petitioner to frame schemes to give medical treatment and rehabilitation to the lepers. After several schemes nd nine years, the Court issued specific directions to the Delhi Administration on 18.7.1994 to supply the quantity of medicines indicated by the Petitioner to atleast six leper colonies in Delhi - a direction which the Petitioner contends has yet to be complied with. The Court by its order dated 16.9.1994 recorded non compliance of its earlier directions and gave another two weeks time to the Delhi State to report compliance. On the Petitioner's assertion that Delhi State had still not complied with the said directions and that instead had merely distributed slips of paper to the lepers giving names of medicines to be bought by them from the open market, the court appointed a Commissioner to ensure compliance of its orders. The Commissioner so appointed sought further directions from the Court to secure implementation. The Petitioner then placed on record of the Court few affidavits of non-governmental organisations who surveyed the leper colonies and reported that the directions of the Court had still not been complied with. Finally, the Supreme Court, by its order dated 3.10.1996, referred the entire matter to the Delhi High Court where the Delhi State has yet to put in its appearance.

Another P.I.L.[6] of 1985 in the Supreme Court pleaded that due to the existing inhuman conditions, there was death of a mentally ill patient every second day at the Ranchi Mental Asylum. There was no electricity no water at the asylum. Patients were deprived of food, clothing and medicines. No toilet was functioning. There were no beds - the 300 iron cots provided in 1975 were broken. There were no windows or doors - instead, the cots were used to block upon spaces in the walls so that patients, often naked and wallowing in their own excreta, do not jump out. There were allegations of rampant corruption and sexual exploitation of female mentally ill patients. The court required the concerned Magistrate to visit the asylum and to submit his report which confirmed the shocking state of affaris. The court, after perusing reports of Commissioners, initially sought to grant specific relief - it ordered on 20.10.1986 that the allocation of funds for provision of meals for each patient be increased from Rs 3.50 to Rs. 10/-; that adequate drinking water be supplied etc. The Court observed in its Order dated 27.9.1988 that the State Government has not been able to "assess the priorities"; that "it was a slur on the administration" that even the existing toilets have taken more than two years

to repair and that it was "difficult" for the court "with any sense of confidence" to leave the management of the asylum with the Health Department of the State. The Court, for the next six years, sought to monitor the situation through constituting Management Committees and obtaining periodic reports. When the conditions still did not improve primarily due to rampant corruption in the asylum, the court, by its order dated 8.9.1994, "legislated" Rules to run the asylum which also provided for the constitution of an autonomous Management Committee to govern the asylum. The State Government was required to promulgate these Rules and the Union Health Secretary was required to report to the Court on this new set-up. Similar Rules were "legislated" by the court in P.I.L. relating to Gwalior[7] and Agra[8] Mental Asylums where the conditions were equally shocking. The Union Health Secretary submitted reports in respect of all the three hospitals stating that several directions of the Court has yet to be complied with. The court recorded in its order dated 16.9.1997 that "these reports indicate a shocking state of affairs in the management of these Asylums inspite of the orders made by this Court from time to time for improving their management". The Court, by its order dated 4.11.1996, directed the personal appearance in court of the Health Secretaries of the States of Bihar, Uttar Pradesh and Madhya Pradesh to answer queries relating to the compliance of the court orders. The court, by its order dated 9.12.1996, recorded the separate undertakings of the Health Secretaries of the said States to comply with the Court directions by the time specified therein - an undertaking which was again not honoured. The States thereafter submitted reports indicating partial compliance. Suddenly, the court, by its order dated 11.11.1997, deemed it fit to just then refer the P.I.L. actions to the National Human Rights Commission for its supervision.

These instances highlight the need for devising an implementation machinery to ensure that the Court directions are actually complied with. Since it is the constitutional and statutory obligation of the Court to ensure the compliance of its directions, the court must adopt a stricter approach with the state which does not hesitate in suppressing information from the court or willfully making false and contradictory statements on oath. The Court has to ensure accountability for violation of its orders lest the judiciary itself loses its credibility. For instance, there was no justification for the Supreme Court not to take action against the concerned State officers for disobeying its directives in the aforesaid instances - rather, the failure of the Court to do so amounts to abdication of its constitutional function to secure the enforcement of fundamental rights.

While P.I.L. as strategy to enforce fundamental rights has become well settled, Judges vary in their affection for P.I.L. The position gets compounded by the fluctuating Bench structure. Further, while one Bench may follow up a P.I.L. to its logical end, another Bench could view the issuance of general directions to be sufficient discharge of its constitutional obligation to enforce fundamental rights. For instance, in a P.I.L.[9] filed in 1985 in the Supreme Court, which related to thresher victims in the State of Punjab who lost their limbs and lives while operating threshing machines, the Petition gave five illustrative cases to indicate that the victims were not even aware of their right to claim compensation, medical aid and rehabilitation and instead continued in employment of the same employers in conditions worse than bonded labour. The concerned State Government in its Affidavit dated 19.10.1985 admitted the blatant violation of the human rights of the thresher victims but pleaded that though the Central Goverment had enacted the Dangerous Machinery (Regulation) Act, 1983 to secure safety of the labour and to provide for compensation, it had yet to frame Rules to give effect to the Act. The Court, by its order dated 24.4.1986, placed its hope and trust that the state will frame the Rules to implement the 1983 Act - it took eight years of Court proceedings to fulfill this hope and trust with the publication of the Rules in the official Gazette dated 6.5.1994. However, even these Rules related primarily to licences to be issued to manufacturers/owners of dangerious machines. Further, the petitioner had pointed out that the 1983 Act itself was defective in several respects so as to enable an employer to defeat its very purpose and, upon being directed by the Court, placed on record certain suggestions for amendment to the 1983 Act. The court after requiring the State and Central Governments to consider the said proposed amentdments for incorporation suddently opined, by its order dated 8.11.1995, that the request of the petitioner for amendment of the 1983 Act was by itself not sustainable and disposed off the Petition.

The author filed a P.I.L.[10] in 1992 on behalf of 25 million victims of fluorosis in fifteen states of the country; a disease caused by drinking flouride contaminated water.

Fluorosis results in the spine, waist and the limbs of the victim - men, women and children - getting crippled and deformed and the victim finds it difficult to move even with sticks or to look backwards or upwards. The sufferer is perpetually in acute pain due to twisting, stiffenign and swelling of bones and joints. Standing or sitting is beyond the victims's capabilities. The victim develops bed sores due to being bed-ridden and have to be helped to even move sides since his legs and hands get destroyed. The victim normally suffer from paralysis and severe gastrointestinal problems such as ulcers and acute abdominal pain. Further, the disease is transmitted in pregnancy from the mother to the child through the placenta. Two years later, the Central Government filed an Affidavit dated 31.10.1994 wherein it admitted the painful existence of about 25 million people afflicted by fluorosis; detailed the forms of fluorosis; confirmed the gravity of the problem and added that :

> "abortions, still briths and children born deformed, are common in the endemic area...unscientific and false publicity promoting fluoride in India through sale of fluoridated toothpastes, mouth-rinse, varnish, chewing gums and tablets need to be banned in the (country) especially in the endemic states, in public interest. The Honlble Supreme Court's verdict in the matter will be a boon for the people of the country; and Governmental agencies, State PHEs are likely receives much better co-operation from the community public in implementing the programme".

The Central Government indicated in its Affidavit the remedial steps being taken or proposed to be taken in each State. The author filed Applications for Directions placing on record articles reporting the non implementation of the Governmental schemes and falsifying the claims about the remedial measures stated to have been taken by the State. In August 1994, ZEE TV had aired a programme called "Insight" visually confirming the "heartwrenching situation that will touch even the most hardened souls who have a shred of humanity left in them". The programme filmed countless people existing in prolonged agony - defenceless, stunted, deformed, disabled and dependent on charity. In villages after villages, people are forced to drink the "poisoned" water, red like diesel in colour, in the absence of any potable water. School children afflicted by fluorosis were worried not about their careers but whether they will be able to walk at the age of 20 without a stick. The author therefore sought to place this taped programme of record of the Court and sought certain immediate directions particularly since thousands of persons were and still are daily crossing the threshold of fluoride intake beyond which fluorosis becomes incurable. The court however deemed it fit to dispose off the Writ Petition on 6.2.1995 with a general direction to all states to implement the suggestions made in teh said Affidavit dated 31.10.1994 of the Central Government as expeditiously as possible. The author has in the past few months come across articles in magazines and newspapers reporting that a whole new generation has become victims of fluorosis.

To conclude, the Indian Constitution obliges the Court to realise the human right of health. It is no doubt true that health related actions are particularly time consuming and complex and often impinge on policy issues requiring the court to prioritize and balance competing interests. The affected persons might at times constitute large sections of society. Yet the court cannot, consistent with its constitutional obligation to enforce the human right of health, be relieved of the responsibility of delivering immediate and effective redress to the victims or of realising the meticulous implementatioin of its orders and enusring accountability of erring state officials. The Court has all the powers it needs to discharge such constitutional role - it may lack the same perception.

References and Notes

1. For instance, see Bandhua Mukti Morcha v. Union of India : AIR 1984 SC 802.
2. Hussaninara Khatoon v. State of Bihar : AIR 1979 SC 1360.
3. For detailed discussion on P.I.L. see Hingorani A (1995) XVII Delhi Law Review 159.

4. Residents of Well Defined Goitre Endemic Area v State of Jammu & Kashmir, Civil Writ Petition No. 5047 of 1982.
5. Govind Ram (now Yashwant) v. Union of India, Civil Writ Petition No. 10210 of 1985.
6. R C Baraub v. State of Bihar : 1986 (Supp.) SCC 576; AIR 1995 SC 208.
7. Kamini Devi through Aman Hingorani v. Union of India & Ors. : AIR 1995 SC 204.
8. Aman Hingorani v. Union of India & Ors. : AIR 1995 SC 215.
9. Jai Singh v. State of Punjab : Civil Writ Petition No. 11703 of 1985.
10. Aman Hingorani v. Union of Indian & Ors. : Civil Writ Petition No. 436 of 1992.