



**RIGHTS OF AIDS PATIENTS IN INDIA:
COMMENT ON MR.'X' v. HOSPITAL 'Z'**

I Introduction

ACQUIRED IMMUNE Deficiency Syndrome (AIDS) is a dreadful disease without any cure and it can only be prevented. Therefore a person who is found to be HIV positive, nowadays is isolated by the society and sometimes even by his own family members and blood relatives, under the misconception that AIDS is easily communicable. At the same time, it cannot be disputed that even the AIDS patients have certain fundamental rights and legal rights which they cannot be deprived of merely because they have ADIS. It is in this background that the Supreme Court of India has given a landmark judgment, resolving certain complex legal issues.

In 'X' v. *HOSPITAL 'Z'*¹ a Division Bench of the Supreme Court consisting of Justice S. Saghir Ahmad and Justice B.N. Kirpal dealt with the various aspects relating to rights of AIDS patients. The main issues agitated before the court were whether (i) right to marry is an absolute right, (ii) ADIS patients have a right to marry and right to privacy, (iii) right to health takes precedence over right to privacy, (iv) Medical practitioners have an obligation not to disclose the ADIS disease and identity of the patient, etc.

II Brief facts of the case

In the instant case, the appellant Mr. 'X' was a doctor by profession working in the Health Service of the State of Nagaland as assistant surgeon. As a part of his duty, he was advised to accompany a patient diagnosed as 'aortic aneurysm' to 'Z' hospital at Madras. For treatment of the above disease, the said patient was posted for surgery on 31-05-1995, which however was cancelled due to shortage of blood. On 01-06-1995, i.e., the next day the appellant Mr. 'X' and the driver of the patient were asked to donate blood for the patient and their blood samples were taken and the result showed that the appellant's blood group was A+ve. On the next day, the patient was operated upon successfully and discharged on 10-06-1995.

1. (1998) 8 SCC 296.



After coming back to Nagaland, the appellant proposed marriage to one Ms. 'Y' which was accepted in August 1995. It was to be held on 12-12-1995 but was called off on the ground that the blood of the appellant collected at the Madras Hospital was found to be HIV positive. Thereafter the appellant again went to the respondent's hospital at Madras, where after conducting several tests, it was confirmed that he was HIV positive. Since the marriage had been settled but subsequently called off, several people including members of the appellant's family and other members of his community became aware of his HIV +ve status. This resulted in severe criticism of the appellant and he was ostracised by his community, as a result of which he left Nagaland and started working and residing at Madras.

The appellant first approached the National Consumer Disputes Redressal Commission for damages against the respondents, on the ground that the informations regarding his HIV +ve status which was required to be kept secret under the medical ethics was disclosed illegally and therefore, they were liable to pay damages. However the Commission dismissed the complaint as also the application for interim relief summarily on the ground that the appellant may seek his remedy in the civil court.

Aggrieved by the order of the National Commission, the appellant preferred a civil appeal to the Supreme Court which was decided in the instant case. The appellant's main grounds of challenge were :

- (i) the principle of 'duty of care' as applicable to persons in the medical profession, includes the duty to maintain confidentiality and since this duty was violated by the respondents, they were liable to pay damages to the appellants.
- (ii) the appellant's right to privacy had been infringed by the respondents by disclosing that the appellant was HIV +ve and, therefore, they were liable to pay damages; and
- (iii) the appellant's right to marry was adversely affected by violation of his right to privacy, etc.

III Ratio of the Decision

The Supreme Court has extensively dealt with the above issues and also other related issues, with the help of many International covenants, statutory provisions and decided cases.

(1) Duty of doctors to maintain confidentiality in AIDS cases

Regarding the contention that right to privacy is a fundamental right and that persons in the medical profession have an obligation to



maintain confidentiality, the court referred to the (i) Hippocratic Oath administered to doctors; (ii) covenant to maintain secrecy and confidentiality in the International Code of Medical Ethics and (iii) relevant law in India. The Indian Medical Council Act 1956 in sec. 20 A empowers the Indian Medical Council to prescribe standards of professional conduct, etiquette and a code of ethics for medical practitioners. Similarly section 33 of the Act empowers the council to make regulations, providing *inter alia* for standards of professional conduct and etiquette of the code of ethics to be observed by medical practitioners. Under these provisions, the code of Medical Ethics was drafted by the Indian Medical Council which *inter alia* provides as under :

Do not disclose the secrets of a patient that have been learnt in the exercise of your profession. Those may be disclosed only in a court of law under orders of the presiding Judge.

Based on this provision, it was argued before the Supreme Court that the doctor's duty to maintain secrecy has a correlative right vested in the patient that whatever has come to the knowledge of the doctor would not be divulged and it is this right which was violated by the respondents. However, the court after going through the entire gamut of facts and law referred to the guidelines on HIV infection and AIDS issued by the General Medical Council of Great Britain which *inter alia*, provide that a doctor may consider it a duty to ensure that any sexual partner is informed regardless of the patient's own wishes."² Ultimately the court held that public interest would override the duty of confidentiality, particularly where there is an immediate or future health risk. On this count, the court upheld the action of the respondent hospital, in disclosing the HIV +ve status of the appellant to the hitherto prospective bride and others.

(2) Right to Privacy of AIDS patient

The court has also extensively discussed the nature of the 'right to privacy' in general and that of AIDS patients in particular. The Division Bench referred to evolution of the right to privacy as a fundamental right emanating from the right to life and personal liberty under article 21 of the Constitution of India in *Kharak Singh v. State of U.P.*,³ *Gobind v. State of M.P.*,⁴ *Malak Singh v. State of P & H*⁵ and the *Auto*

2. *Id.* at 304.

3. AIR 1963 SC 1295.

4. (1975) 2 SCC 148.

5. (1981) 1 SCC 420.



Shankar case⁶. The court also referred to a few American decisions like *Munn v. Illinois's*⁷, *Wolf v. Colorado*⁸, and *Roe v. Wade*⁹ and also article 8 of the European Convention on Human Rights, and emphatically declared.

As one of the basic Human Rights, the right of privacy is not treated as absolute and is subject to such action as may be lawfully taken for the prevention of crime or disorder or protection of health or morals or protection of rights and freedoms of others.¹⁰

The court, in the instant case, thus concluded that, having regard to the fact that the appellant was found to be HIV +ve, its disclosure would not be violative of either the rule of confidentiality or the appellant's right of privacy as Ms. 'Y', with whom the appellant was likely to be married was saved in time by such disclosure, or else, she too would have been infected with the dreadful disease if the marriage had taken place and consummated.

(3) Right of AIDS patient to marry

During the course of the judgment, the court also discussed the issue of the right to marriage of AIDS patients. It noted that having regard to the age and biological needs, a person may have a right to marry but this right is not without a duty. Since mental and physical health is of prime importance in marriage, any person suffering from a venereal disease which is communicable in nature, may not claim a right to marry as an absolute right.

In this context, the apex court referred to the grounds of divorce available to a married person including the "suffering from venereal disease in a communicable form" of the other spouse under different laws.¹¹ The court also cited sections 269 and 270 of the Indian Penal Code 1860 (IPC) which spell out two separate and distinct offences by providing that if a person, negligently or unlawfully, does an act which he knew was likely to spread the infection of a disease, dangerous to life, to another person, then the former would be guilty of an offence,

6. *R. Raja Gopal v. State of T.N.* (1994) 6 SCC 632.

7. 944 US 113 : 24 L. ED 77 (1877).

8. 338 US 25 :93 L Ed 1782 (1949).

9. 410 US 113 : 35 L ED 2d. 147 (1973).

10. *Supra* Note 1 at 306.

11. Under s. 13 (1) (v) of the Hindu Marriage Act 1955, s. 2 of the Dissolution of Muslim Marriages Act 1939, s. 32 of the Parsi Marriage and Divorce Act, 1936, s. 10 of the Indian Divorce Act 1869 and s. 27 of the Special Marriage Act 1954.



and held that if a person suffering from the dreadful disease 'AIDS', knowingly marries a woman and thereby transmits infection to that woman, he would be guilty under the aforementioned provisions of IPC.

Thus, the learned judges held that so long as the person suffering from "AIDS" disease, is not cured of that communicable disease or other venereal disease or impotency, the right to marry cannot be enforced through a court of law and shall be treated as a "suspended right"¹²

(4) Conflict between fundamental rights of two persons right to health vs. right to privacy

As a result of the judiciary invoking the theory of "emanation" from article 21, it has now been firmly established that both the right to privacy and the right to health 'have acquired the status of fundamental rights'.¹³ In the instant case, obviously there was a conflict between the right to privacy of an AIDS patient and the right to healthy life of his fiancée. The court while dealing with such a conflict observed as under:

... where there is a clash of two Fundamental Rights, as in the instant case, namely the appellants's right to privacy as part of right to life and Ms 'Y's' right to lead a healthy life which is her Fundamental Right under Article 21, the right which would advance the public morality or public interest, would alone be enforced through the process of the court.¹⁴

Thus, the court has emphatically declared that, if there is a conflict between fundamental right of two parties, that right which advance public morality or public interest would be enforceable, probably relying upon the concept of utilitarianism.

IV Conclusion

The foregoing analysis and discussion make it clear that the Supreme Court has delivered an important judgment capable of far reaching consequences, affecting the right of AIDS patients in India. This is a

12. *Supra* note 1 at 308.

13. See *Supra* notes 3 to 6 for evolution of the right to privacy as a fundamental rights and *Consumer Education and Research Centre v. Union of India*, AIR 1995 SC 922 *State of Punjab v. M.S. Chawla*, AIR 1997 SC 1225 *etc.*, for evolution of the right to health as a fundamental right.

14. *Supra* Note 1, at 309.



welcome step, particularly because it dispels many misconceptions about the right of unfortunate AIDS victims. By holding that (i) AIDS patients do not have a right to privacy as to their HIV +ve status, (ii) they do not have a right to marry since such right is not an absolute right and (iii) that the doctors are under a legal obligation to disclose the HIV +ve status to the concerned persons, the Supreme Court has delivered a timely and landmark judgment in the instant case. However it may not be out of place to mention here that the judiciary has declared in many cases including this case that government jobs or services cannot be denied to AIDS patients, as has been laid down in a number of American and Indian decisions.¹⁵

This judgment also implicitly reminds the Legislatures in India that, in the laws dealing with divorce in India like the Hindu Marriage Act 1955, the Indian Divorce Act 1869, the Special Marriage Act 1954 and the Parsi Marriage and Divorce Act 1936, there is a need for amending the grounds for divorce, by explicitly including 'AIDS' as one of the grounds. Such an amendment may go a long way in protecting the life and health of the innocent spouse and children in at least a few cases.

G.B. Reddy*

15. See, *School Board of Nassau Country, Florida v. Air Line*, 107 S Ct 1123 (1987). *Chalk v. USDCCD of Cal.* (9th Cir 1988) 840 2F 2d 701, *Shuttle-Worth v. Broward City* (SDA Fla 1986) 639 f. supp. 654 and *Raytheon v. Fair Employment and Housing commission, Estate for Chadbourne*, 261 Cal. Rep. 197 (1989) etc. In India see *MX of Bombay Indian Inhabitant v. M/S ZY*, AIR 1997 Bom 406 (D B) and *Narendra Kumar Chandla v. State of Haryana*, AIR 1995 SC 519 on this point.

* Assistant Professor, University College of Law, Osmania University, Hyderabad-500 007.