



Advocate Prakash Mani Sharma v. Government of Nepal and Others

Writ No.064 WO 0230

Country: Nepal

Region: Asia

Year: 1999

Court: Supreme Court

Health Topics: Child and adolescent health, Diet and nutrition, Health care and health services, Health information, Health systems and financing, Hospitals, Poverty, Sexual and reproductive health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to health, Right to life, Right to privacy

Facts

Under Article 20(2) of the Interim Constitution 2063 in Nepal, every woman in Nepal had the fundamental right to reproductive health. However, there were no effective health services addressing the issue of uterine prolapse, a serious ailment affecting nearly 600,000 women in Nepal.

The Petitioners, among others, Pro-Public, an organization working in the area of women's rights, filed a writ petition seeking directive orders against the Government, the Respondent, seeking, among other things, to provide services or cause to provide services through the health centers, sub-centers and from health workers and subsequently provide an updated report. The petition also sought to mandate the Legislature to enact a law addressing the issue of reproductive health of women. The Respondent contended that the Petitioners had no locus standi, as the issue was the subject matter of an international treaty. Moreover, the Petitioners had failed to mention a violation of rights specific to them.

Decision and Reasoning

The Court held that uterine prolapse was a matter of public interest and the State had an obligation to address and remedy the issue. It considered that, in this case, the Legislature and Executive had abdicated their responsibilities by not protecting the right to reproductive health. Thus, the Court held that it had the power to issue appropriate directions to enact and execute laws upholding a woman's constitutional right to reproductive health.

The Court held that reproductive health was an important part of the human rights of a woman. The right to health was part of the right to life. Additionally, the right to reproductive health was related to other rights of a woman such as the right to privacy, right to freedom, right to equality and social justice. The Court held that when a woman's reproductive capacity was affected due to inadequate health facilities, a number of interrelated rights would also be affected. Therefore, while making provisions for reproductive health, a woman's right to privacy, family planning, access of information regarding health care, and provision of health care services were essential.

The Court emphasized the importance of holding the State responsible for the realization of economic, social and cultural rights. Economic, social and cultural rights protected under the constitution and under international human rights law required positive action by the state, and not just mere declaration or recognition. Remedial actions would therefore not be based around identifying a breach, but around whether or not a particular class of individual was able to enjoy the practical benefits of the right. The State had a duty to take the necessary approaches to create a satisfactory and conducive environment for the exercise of such rights. In the opinion of the Court, the State had failed in this duty.

The Court also accepted that it could hear the case as a public interest matter on the basis of reports made by non-governmental organizations and presented by the Petitioners. The Court noted that such studies were not scientific, but as the reports were intended only to outline the nature of the problem, which was not contested by government, there was no need for them to adhere to the laws of evidence required for private disputes.

The Court therefore ordered the Government and several government agencies to hold a consultation, draft a bill, and prepare social programmes aimed at addressing the issue of uterine prolapse.

Decision Excerpts

“Right relating to health of woman is a part of right to life. Except as provided for by law no person shall be deprived of his personal liberty. Likewise, the right to live a dignified life is also a basic right to life. Provided, the State does not provide the basic facilities or protection for the health of a human being, then proper protection of the right to life cannot be achieved. Therefore, it is necessary to link life with right to health.” [Writ No.064 WO 0230, Para 16]

“Matters relating to reproductive health is not only a right relating to health and a right recognized by the international treaties but is also recognized as a human right under Article 20 (2) of the Interim Constitution.” [Writ No.064 WO 0230, Para 20]

“Reproductive health is a right, the mere recognition of which in the Constitution is not sufficient, rather physical facilities should also be made available for the enjoyment of this right. In the absence of any legal, institutional, procedural and result oriented infrastructure, this right would be limited to formalities.” [Writ No.064 WO 0230, Para 22]

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