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Case Comment: Common Cause v Union of India and Ors - A Wake to Judicial Activism: The Proactive Role of the Judiciary in Protecting the Rights of Citizens

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INTRODUCTION

Common Cause is an organization that is involved in public matters and its activities are run with voluntary contributions from all its members. It is an organization that filed a Public Interest Litigation¹ pursuant to Article 32 of the Constitution of India² to highlight the serious deficiencies and shortcomings in the matter of collection, storage, and supply of blood through the various blood centers operating in the country. This case comment scrutinizes the first significant judgment on the blood transfusion system in India. The comment derogates the rule of fair transfusion of a most essential component of the body which provides sustenance to life. It discusses the issues that emerged from the traditional hoodoos that have been practiced incessantly. The comment is to identify this case as an important commentary on an issue where there is legislation but no administrative body to enforce it.

¹ *Common Cause v Union of India and Ors* (1996) 1 SCC 753

² Constitution of India 1950, art 32

Article 21 of the Indian Constitution³ provides the Right to Life and Personal Liberty, where earlier in the case *A K Gopalan* interpreted that it was a mere animal existence and later in *Maneka Gandhi*⁴ it was further interpreted as living life with human dignity. The trend in judicial interpretation of Article 21 has changed over the years and the judiciary has not only been involved in judicial activism but also judicial creativity. The ambit of Article 21 has been increased and then turned to education and health care resulting in moving powerful PILs later on. According to the Indian Constitution State List contains public healthcare as 'Public health and sanitation; hospitals and dispensaries.' The petitioner filed PIL, has highlighted the serious issues in the matter of collection, storage, and supply of blood through various blood centers operating all over the country and for an appropriate writ direction to be issued directing the Union of India and the States and the Union Territories who have all been impleaded as respondents for adequate and concrete steps in a time bound program to stop the ill practices arising from blood banks and aimed to overcome the problems and challenges in the operation of the blood banks. The petitioner strives to direct an order for the regulation and proper functioning of blood banks. The writ also seeks to ensure a proper, positive, and strong step has been initiated to obviate the malpractices, malfunctioning, and inadequacies of the blood banking system in India. The writ also directs us to overcome the problems found in the study of *M/s. A.F. Ferguson & Co.* in 1990 assessed the status of Government, Private, Commercial, and Voluntary blood banks and recommended policy and procedure changes.

FACTUAL BACKGROUND ARGUMENTS OF PARTIES IN BRIEF

Many of the blood banks that functioned across the country were in poor conditions. The whole system was not proper. Out of 1018 blood banks, 616 were unlicensed. Neither a medical checkup was done nor their health status was examined. It was also reported that even a mandatory test required to be done like screening for AIDS was rarely conducted. The donors were reported to be of ill health and low hemoglobin. It was also reported that storage facilities in blood banks are not satisfactory. The working of blood banks and their storage were in a dirty

³ Constitution of India 1950, art 21

⁴ *Maneka Gandhi v Union of India* AIR 1978 SC 597

and unhygienic environment. For the prioritization of blood banks, there were even middlemen in arranging donors to the blood banks. The majority of the donors were alcoholics or drug abusers, and also were indiscriminate to sexual habits and therefore unfit to donate blood. The working and functioning of blood banks were not under the control of trained personnel. In the counter affidavit filed by Dr . Lalgudi Vaidyanathan Kannan, Deputy Drug Controller on behalf of Union of India, it is stated that after the report of M/s Ferguson & Co was submitted, it was asked the State Drug Controller to ensure inspection in all commercial blood banks and Government blood banks keeping in view the standard prescribed in the Act and rules. It also mentioned that relevant and needed steps were taken in testing blood for AIDS, storage facilities in blood banks, upgradation and modernization of blood banks, and training of drug inspectors and blood banks technical personnel.

ISSUES OF LAW

1. Whether the Fundamental Rights of the citizens are affected by the malfunctioning of the blood banking system.
2. Whether the guidelines should be accepted as operative and enforceable by the Court under Article 142.
3. Whether the ill practices arising out of the functioning of blood banks be obviated by the given recommendations or guidelines.

JUDGMENT

Keeping the view of the report of the committee that has been constituted by the Honourable Supreme Court, the report of the experts set up by the Indian Red Cross Society, program implemented by NACO, and the submission of the learned counsel for writ petitioner, Court directs for suitable action that should be taken by Union Government as well as Governments of States and Union Territories by plan for long term as well as short term or intermediate implementation suggested by the committee.

The following guidelines were issued:

1. As suggested by the committee, the entire range of schemes related to the operation and requirements of blood banks should be entrusted to an autonomous representative body at the national level which may be called the National Council on Blood Transfusion. It would exercise its functions in coordination with similar bodies established at the state level that is State Councils.
2. The Union Government shall take steps to establish the National Council for Blood Transfusion as a society registered under The Society Registration Act.⁵
3. The National Council shall have a secretariat in Delhi under the charge of a Director.
4. The basic requirements of the funds for the National Council shall be provided by the Government of India but they are empowered to raise funds from various other sources.
5. In consultation with National Council State Councils shall be registered under The Society Registration Act 1860. The State Council should have its quarters at the premises of the premier medical institution or hospital in the State or Union Territories and should function under the charge of a Director.
6. The activities of the National Council and State Council shall cover the entire range of services related to the operation and requirements of blood banks. The National Council shall undertake training programs for the training of technical personnel in various fields connected with the operation of blood banks.
7. The National Council shall establish an institution for conducting research in collecting, storage, distribution, and transfusion of whole human blood components, manufacture of blood products, and other allied fields.
8. The National Council shall take steps to start specialized PG courses in blood collection, processing, storage, and transfusion and allied fields in various medical colleges and institutions

⁵ The Registration Act 1908

in the country.

ANALYSIS/COMMENT

A: SCOPE OF JUDGMENT AS JUDICIAL ACTIVISM ON ARTICLE 21

This judgment furnishes with interpretation to Article 21⁶, which guarantees the Right to Life and Personal Liberty. In the case, *Vishaka v State of Rajasthan*⁷ the Honourable Supreme Court laid down the guidelines and norms until legislation was enacted for ensuring women's safety in the workplace. This is done in the exercise of the power available under Article 32⁸ for the enforcement of fundamental rights and an emphasis on Article 141⁹ can also be observed. The scope and ambit of Article 21 have extended to the right to health care which also comprises access to quality blood service.

B: COMPREHENSIVE IMPACT OF THE JUDGMENT

This judgment covers almost every area related to blood and transfusion. The court pronounced its verdict on every point where there was a need for regulation concerning the operation of blood banks and their functioning. From the Court's observations, there emerged a scope of novel culture on blood services. From encouraging voluntary blood donation to establishing research institutions for developing the blood transfusion system of this country, several directions were enumerated in this comprehensive judgment. The National Council as well as the State Council are entrusted with fruitful services that can be consumed by the underprivileged mass of India.

C: RELEVANT CHANGES TOOK AFTER THE JUDGMENT

With the Court's interference, the blood banking system was enriched with an integral systematic approach to its applications. According to the latest study reported by NACO

⁶ Constitution of India 1950, art 21

⁷ *Vishaka and Ors v State of Rajasthan and Ors* (1997) 6 SCC 241

⁸ Constitution of India 1950, art 32

⁹ Constitution of India 1950, art 141

(National Aids Control Organization) in association with NBTC (National Blood Transfusion Council), 91.5% of the blood banks reported that they adhered to the NBTC guidelines. As per the study, the majority of the blood banks (65.7%) had a valid and current license and the remaining 34.3% had applied for renewal. Transfusion-transmitted infections (TTIs) are major problems associated with blood transfusion. Screening for TTIs such as HIV 1, HIV 2, Hepatitis B, Hepatitis C, Malaria, and syphilis is mandatory in India. Due to the concerted and active efforts, the seropositivity percentage of TTIs has come down significantly over the years. This study proves the judgment and its enforcement through organizing an administrative body for the regulation of quality blood transfusion was effective.

D: ASCERTAINING THE VALIDITY OF ADOPTING GUIDELINES UNDER ARTICLE 142 OF THE CONSTITUTION

Article 142¹⁰ is an Article based on the complete justice principle. ‘This court’s power under Article 142(1)¹¹ to do ‘complete justice’ is entirely of different level and a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this court.’¹²

Supreme Court has the power to mitigate the rigor of legislation as well as to provide decrees to ensure citizen’s fundamental rights are not been violated. in this particular case also, the court invoked its power under Article 142 and laid down guidelines to protect the public will. From these guidelines it is clear that the Court observed that blood being an essential component to the sustenance of life, it is necessary to safeguard its transfusion.

CONCLUSION

The judgment is correct, precise, and indubitably clears the law, with the positive implications of enforcing the much-needed guidelines in the area of the issue. The Court adopted the recommendations and issued directions under Article 142 of the Constitution of India, to fill the

¹⁰ Constitution of India 1950, art 142

¹¹ Constitution of India 1950, art 142(1)

¹² *Delhi Judicial Service Association TIS Hazari Court, Delhi v State of Gujarat and Ors* (1991) SCC 4 406

gaps in existing legislation as a conjoint responsibility of the three organs of the state under Article 12 for the attainment of constitutional goals. In judgment it was also provided that it will be open to the Director General of Health Services, Government of India as well as the National Council to seek clarification or modification of the directions. It was a clear case of violation of the fundamental right of citizens to have health care by the state. The guidelines have been adopted holding the dangers inherent in the supply of contaminated blood. The court has provided certain guidelines expecting a systematic and strict adherence to them. However, it is high time to evaluate whether the functioning of blood banks is integrated or not. A significant judgment later on pronounced¹³ related to the non-clinical use of blood has relevance in this context. In a significant judgment¹⁴ of the Division Bench, relying on this revolutionary decision, the Apex Court held.

‘There are enumerable decisions of this Court where this approach has been adopted and directions issued to enforce fundamental rights which may sometimes be perceived as legislative. Such directions can certainly be issued and continued till an appropriate legislation is enacted.’

National Council, State Council, or other interested non-governmental organizations can take some measures to encourage voluntary blood donation and discourage blood trade. Each State Government shall ensure the whole blood and its components available with blood banks are screened for HIV or other transfusion-transmitted diseases. The emphasis should be solely on the health and integrity of the citizens rather than harping on the achievements of private parties.

¹³ *Ashok Naik v Union of India* (2013) SCC OnLine Guj 2586

¹⁴ *Subhash Kashinath Mahajan v State of Maharashtra* (2018) 6 SCC 454