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Case Comment: Upholding Constitutional Rights: A Critical Analysis of Vidya Ramesh Chand Sha v State of Gujarat

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INTRODUCTION

“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”¹.

It has been 75 years now that these words were adopted in the Constitution of the World Health Organization and this court, through these petitions, is called upon to decide the issue of applicability of ‘Right to Health’ in terms of the petitioners. This sentence engraves the introduction of the judgement the landmark case of Vidya Ramesh Chand Sha v State of Gujarat², which bears significance in the realm of constitutional law, particularly in its profound exploration of fundamental rights guaranteed by the Indian Constitution. In this case, the judiciary grappled with the intricate balance between equality before the law and the right to life and personal liberty, as enshrined in Articles 14³ and 21⁴ respectively. Central to the case

¹ The Constitution of World Health Organization 1946

² *Vidya Ramesh Chand Sha v State of Gujarat* (2022) SCC Online Guj 2021

³ Constitution of India 1950, art 14

⁴ Constitution of India 1950, art 21

was the question of whether the application of certain state guidelines infringed upon these fundamental rights, particularly in the context of organ transplantation and healthcare accessibility. The Hon'ble court offered insight into the not-so-easy question to have answers for – whether citizenship or domicile stands as a barrier to accessing the 'Right to health'.

This commentary embarks on a comprehensive analysis of the legal principles, precedents, and societal implications expounded by the judgment in *Vidya Ramesh Chand Sha v State of Gujarat*⁵. By delving into the subtlety of constitutional interpretation and the evolving landscape of human rights jurisprudence, this commentary seeks to shed light on the enduring significance of this case in safeguarding the rights of individuals, irrespective of their citizenship status, and ensuring equitable access to essential healthcare services devoid of any discrimination.

The case was a joint hearing of three petitions that are- R/SPECIAL CIVIL APPLICATION NO. 18056 of 2022 With, R/SPECIAL CIVIL APPLICATION NO. 14029 of 2022, with R/SPECIAL CIVIL APPLICATION NO. 8602 of 2022.

FACTS OF THE CASE

Special Civil Application No. 18056 of 2022 seeks a writ to declare paragraphs 13.1 and 13.10(C) of the Gujarat Deceased Donor Organ and Tissue Transplantation Guideline (G-DOT GUIDELINES⁶) as arbitrary and illegal, discriminatory, ultra-vires and in violation of fundamental rights of petitioner as well as citizens of India. The petitioner, an Indian citizen, brought up in Madhya Pradesh but of Gujarati descent, urgently requires a liver transplant due to cirrhosis. Despite familial donors being medically unsuitable, the petitioner was placed on the non-domicile list, hindering her access to cadaver donations. The resolution dated 14.03.2019 stipulates that priority will be given to domicile residents for organ allocation. Only after exhausting the domicile list will organs be offered to non-domicile individuals. The petition challenges these guidelines, which prioritize domicile residents over non-domicile ones.

⁵ *Vidya Ramesh Chand Sha v State of Gujarat* (2022) SCC Online Guj 2021

⁶ The Gujarat Deceased Donor Organ and Tissue Transplantation (G-DOT) Guidelines 2019

Special Civil Application No. 14029 of 2022 seeks a writ to quash communications dated 01.06.2022 and 04.06.2022, directing the issuance of a domicile certificate for kidney transplantation. The petitioner is a Canadian citizen and Overseas Citizen of India, relocated from Mumbai to Ahmedabad in 2009. The petitioner requires a kidney transplant due to kidney dysfunction and has been recommended dialysis twice a week. To undergo the transplant, registration under the Transplantation of Human Organs and Tissues Act, 1994⁷ is necessary. However, her request for registration at Ahmedabad was denied due to the requirement of a domicile certificate. Despite fulfilling residency requirements, her request for a domicile certificate was denied stating that she is a Canadian national and not entitled to a domicile certificate.

Special Civil Application No. 8602 of 2022 seeks relief from the court regarding paragraphs 13.1 and 13.10 (C) of the Gujarat Deceased Donor Organ and Tissue Transplantation Guidelines (G-DOT). The petitioner, an Indian national residing in Gujarat since 2015 and suffering from Focal Segmental Glomerulosclerosis, requires a kidney transplant. However, the guidelines mandate a domicile certificate for registration, which the petitioner was denied due to his residency status, they hadn't lived in Ahmedabad for 10 years, despite being from Jharkhand and residing there since 2015. The petition challenges the legality and constitutionality of these guidelines and requests the court to direct the authorities to register the petitioner for a Cadaveric Kidney Transplant without the domicile certificate requirement.

LEGAL ISSUES

1. Whether the prioritization of domicile residents for organ allocation, as outlined in paragraphs 13.1 and 13.10(C) of the G-DOT guidelines adheres to constitutional principles of equality and the right to health, guaranteed under Art 14 and 21 of the Constitution.
2. Whether the domicile certificate requirement in organ transplantation procedures guarantees fair access to healthcare services and its impact on non-domicile individuals, especially concerning organ transplantation, is justified given medical urgency and necessity.

⁷ Transplantation of Human Organs and Tissues Act 1994

3. Whether the requirement for a separate state domicile certificate, alongside national citizenship, for enrollment on the transplant waiting list, lacks a rational basis and constitutes arbitrary discrimination.

OBSERVATIONS OF THE COURT

The issue at hand pertains to a challenge regarding the compliance of certain guidelines with Art 21 and 14 of the Constitution of India, which guarantees the 'Right to Life' and 'equality before the law'. Essentially, the petitioners are individuals facing a disability due to malfunctioning organs, namely kidneys and livers in their respective cases, necessitating a transplant. However, such transplantation requires corresponding donors. The entire process of organ donation falls under the purview of the Transplantation of Human Organs and Tissues Act 1994. Upon review, it becomes evident that the legislation was formulated to establish a comprehensive framework for regulating the removal of organs from both living and deceased individuals, as well as their transplantation, with the aim of preventing and prohibiting commercial transactions involving human organs. The State authorities' argument that only rights other than those specified under sub-section (2) of Section 7B of the Citizenship Act⁸ will be available to OCI cardholders if specifically notified is flawed. Such a stance cannot be upheld, considering the availability of rights to any individual under Art 14 and 21 of the Constitution of India. Rule 7 of the Transplantation of Human Organs and Tissues Rules, 1994, explicitly limits a foreign national, or a person defined as a 'Foreigner' under the Foreigners Act⁹, to receive organs from a live donor who is not a close relative, even when evaluations regarding commercial transactions or the involvement of middlemen or touts are conducted. The regulations stipulated under the Act, and its accompanying rules already address the need to prevent commercialization and ensure fair allocation of organs. Introducing a domicile certificate requirement, as outlined in the state guidelines, serves no definite purpose in achieving these objectives. Instead, it imposes unnecessary barriers to access healthcare services, particularly for individuals who urgently require organ transplants. The requirement for a domicile certificate in organ transplantation procedures does not guarantee fair access to

⁸ The Citizenship Act 1955, s 7B(2)

⁹ The Foreigners Act 1946, s 2

healthcare services. Moreover, such a requirement contradicts the constitutional guarantee of equality under Art 14 of the Constitution of India.

Art 21 holds a central position in the Constitution, safeguarding the fundamental right to life for all individuals, not just citizens. It encompasses more than mere existence and extends to ensuring a life lived with dignity and the enjoyment of all associated faculties. The right to health and healthcare is an inherent aspect of the right to life under Art 21 of the Constitution of India.¹⁰ The Court emphasized that the right to life would be meaningless without the assurance of certain accompanying rights, including the right to health¹¹. Furthermore, when Article 21 is interpreted alongside other constitutional provisions like Articles 38¹², 39(e)¹³, 41¹⁴, and 47¹⁵, it becomes evident that the right to life encompasses the right to good health and access to healthcare services¹⁶. Art 25¹⁷ of the Universal Declaration of Human Rights, which India has ratified, establishes the right to a standard of living adequate for health and well-being, encompassing essential necessities such as food, clothing, housing, medical care, and necessary social services. This provision is considered to have the force of customary international law. Thus, any infringement upon these rights, including restrictions imposed by guidelines or regulations, must be carefully scrutinized to ensure their compliance with the constitutional guarantee of the right to life. Article 21 imposes a duty on the State to safeguard the right to life of every individual, making the preservation of human life of paramount importance. The primary duty of the State is to “*provide all facilities to make the right of a citizen to secure his health meaningful.*”¹⁸ Providing adequate medical facilities is an integral part of this obligation¹⁹. Every act that offends against or impairs human dignity would constitute deprivation pro tanto of this

¹⁰ *Navtej Singh Johar and others v Union of India* (2018) 10 SCC 1

¹¹ *Ibid*

¹² Constitution of India 1950, art 38

¹³ Constitution of India 1950, art 39(e)

¹⁴ Constitution of India 1950, art 41

¹⁵ Constitution of India 1950, art 47

¹⁶ *In Reference (Suo Motu) v Union of India and Others* (2021) 10 SCC 123

¹⁷ Universal Declaration of Human Rights 1948, art 25

¹⁸ *Association of Medical Superspeciality Aspirants and Residents & Ors v Union of India and Ors* (2019) 8 SCC 607

¹⁹ *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37

right to live and the restriction would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.²⁰

Article 7²¹ of the declaration reinforces the principle of equality before the law, asserting that all individuals are entitled to equal protection of the law without discrimination. It further stipulates that everyone should be safeguarded against any form of discrimination in violation of the declaration and protected from any incitement to such discrimination²². Fundamental Rights are available to all citizens, while some extend to persons who aren't citizens. Article 14 applies to all persons, but Articles 15²³ and 16²⁴ are specifically for citizens, addressing discrimination and equality of opportunity in public employment, respectively. Article 19²⁵ guarantees freedoms like speech, assembly, association, movement, residence, and profession, but only to citizens. The rights under Articles 20²⁶, 21 and 22²⁷ are available not only to 'citizens' but also to 'persons' who would include 'noncitizens'²⁸. Under the Indian Constitution, India is constituted as a Union of States, where every part of every state is an integral and inseparable part of the country. The respondent, born in India with a domicile in Indian territory, is subject to the domicile of the country²⁹. There is only one domicile i.e. domicile of the country and there is no separate domicile for the state³⁰. Article 13 (2)³¹ of the Constitution of India prohibits the State from making any law that takes away or infringes the rights conferred by Part III³² of the Constitution of India and any law made in contravention of Article 13(2), to the extent of the contravention would be void. All statutes and all rules, regulations and by-laws framed by the Government, which constitute law have to be construed harmoniously with the fundamental rights³³.

²⁰ *Ibid*

²¹ Universal Declaration of Human Rights, art 7

²² *Ibid*

²³ Constitution of India 1950, art 15

²⁴ Constitution of India 1950, art 16

²⁵ Constitution of India 1950, art 19

²⁶ Constitution of India 1950, art 20

²⁷ Constitution of India 1950, art 22

²⁸ *Anwar v State of J & K* (1971) SCR (1) 637

²⁹ *State of Telengana and Another v B. Subbarayudu and Ors* (2022) SCC Online SC 1220

³⁰ *Dr. Pradeep Jain v Union of India* (1984) 3 SCC 654

³¹ Constitution of India 1950, art 13(2)

³² Constitution of India 1950, pt 3

³³ *State of Telengana and Another v B. Subbarayudu and Ors* (2022) SCC Online SC 1220

DECISION

The Apex Court has ruled that the 'Right to Health' is inherent in the 'Right to Life' under Article 21 of the Constitution of India, mandating the State to provide healthcare facilities. Introducing a new criterion of the requirement of a domicile certificate for enrolling in the state lists via executive guidelines, is considered a colourable exercise of powers. For the aforesaid reasons, the petitions were allowed. Paragraphs 13.1 and 13.10(C) of the Gujarat Deceased Donor Organ and Tissue Transplantation Guidelines (G - DOT) are held to be ultra-vires the provisions of the Transplantation of Human Organs Act 1994, and Transplantation of Human Organs and Tissues Rules 2014. The court held them to be unconstitutional, unreasonable and in violation of fundamental rights under Articles 14 and 21 of the Constitution of India. Consequently, the requirement for a domicile certificate to be registered as a recipient on the State list for cadaveric organ transplant in Gujarat is deemed illegal and unconstitutional. The respondent State is therefore directed to register the petitioners and other recipients for cadaveric organ transplant without the condition of submitting a domicile certificate.

ANALYSIS

The case presents a crucial intersection of constitutional rights, notably Article 21 - Right to Life and Article 14 - Equality before Law, within the context of healthcare access and organ transplantation regulations. The petitioners challenged the requirement of domicile certificates for organ allocation, arguing that it infringed upon their fundamental rights.

The Court's observation delves into the expansive interpretation of Art 21, recognizing the right to health as an inherent component of the right to life. This interpretation aligns with international standards and reflects a progressive understanding of constitutional principles. Moreover, the Court scrutinizes the domicile certificate requirement through the lens of Art 14, emphasizing the need for equal protection under the law and non-discrimination. The decision highlights the State's duty to provide healthcare facilities and the imperative to remove arbitrary barriers that hinder access to essential services. Art 21 imposes an obligation on the State to safeguard the right to life of every person³⁴. By deeming the domicile certificate requirement

³⁴ *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37

unconstitutional, the Court ensures that individuals facing organ failure can access transplantation procedures without discriminatory hurdles.

Furthermore, the ruling sets a precedent for future cases involving the intersection of healthcare rights and constitutional guarantees. It underscores the judiciary's role in safeguarding fundamental rights and promoting social justice. The case presents a nuanced analysis of the implications, both positive and negative, stemming from the domicile certificate requirement in organ transplantation procedures, with a focus on constitutional rights.

Protection of Fundamental Rights: The Court's ruling upholds the fundamental rights enshrined in the Constitution, particularly Article 21 - Right to Life and Article 14 - Equality before Law, ensuring that individuals have equal access to healthcare services without discriminatory barriers. By striking down the domicile certificate requirement, the Court ensures equitable access to organ transplantation procedures for all individuals, regardless of their domicile status and not deprived of life-saving treatment due to arbitrary administrative hurdles. This promotes fairness and social justice in healthcare delivery. This stands as a protection against the marginalization or exclusion of certain groups based on arbitrary criteria. The court's decision not only ensures individual liberties but also reinforces the foundational principles of democracy and justice upon which the Indian Constitution is built. The decision prevents arbitrary discrimination against individuals based on their domicile status, reinforcing the principle of equality and non-discrimination under the law. In the case of *E.P Rayappa v State of Tamil Nadu*³⁵, the court said that Article 14 gives a guarantee against the arbitrary actions of the state. The right to equality is against arbitrariness.

Challenges in Organ Allocation and Local Healthcare Infrastructure: The removal of domicile certificate requirements may lead to increased demand for organ transplantation services, potentially straining local healthcare infrastructure and resources. Opening the registration for enrollment on the transplant waiting list for all citizens disregarding whether they reside in the state will affect the priority given in the sequence of allocation – the State list, the regional list, the national list, the person of Indian origin and a foreigner. Earlier the criteria were introduced

³⁵ *E. P. Royappa v State Of Tamil Nadu & Anr* (1973) 4 SCC 3

to ensure that domiciles of State have access to medical health and infrastructure. Without domicile-based prioritization, there may be challenges in allocating organs efficiently, especially in regions with limited organ donation rates. This could potentially prolong wait times for transplantation procedures. Enumerating a list of patients on the basis of health condition and necessity will be an arduous task also leaving the space for nepotistic corruption. The marginal and poor people of the State of Gujarat who cannot travel outside of the State for transplantation will be disenfranchised. The rights and fair treatment of ‘a category’ of people was protected and on the other hand, condoning the ‘other category’ to suffer, rendering the decision detrimental to the domiciles of the State.

Legal Precedent: The ruling sets a legal precedent that may influence future healthcare policies and regulations, potentially limiting the flexibility of state authorities in implementing measures to address local healthcare needs. This may prompt individuals and advocacy groups to challenge the existing healthcare policies or regulations that impose similar discriminatory regulations, leading to potential revisions or amendments to ensure compliance with constitutional standards. The precedent set by this case underscores the importance of drafting laws and regulations that prioritize the protection of fundamental rights and ensure equitable access to healthcare services for all citizens. Also, this precedent may be interpreted widely allowing foreigners to avail certain fundamental rights that were exclusive for citizens only and may turn out to be an unfair advantage over the citizens in accessing healthcare services through State facilities.

While the decision has positive implications for protecting fundamental rights and promoting equitable access to healthcare, it also raises concerns regarding potential challenges in healthcare delivery and the broader implications for healthcare policy and governance. Overall, the analysis reflects a robust commitment to constitutional principles, ensuring that the right to health and equality are upheld for all individuals, irrespective of their domicile status.

CONCLUSION

In a landmark ruling, the Apex Court has struck down Gujarat’s organ allocation guidelines requiring domicile certificates. The decision underscores the inseparable link between the right

to health and the principle of equality under the Constitution, emphasizing equitable access to healthcare. By dismantling this barrier, the Court upholds constitutional principles of equality and ensures fair access to organ transplantation for all individuals, regardless of domicile status. This aligns with the constitutional mandate that guarantees every citizen the right to equality before the law and prohibits discrimination. It ensures that all individuals have fair and equal opportunities to access life-saving medical treatments, thereby upholding the fundamental rights to health and equality. In essence, the ruling not only protects but also amplifies the constitutional principles, ensuring that the right to health is not compromised by arbitrary administrative barriers, and reinforcing the notion that equitable access to healthcare is a cornerstone of justice and equality in society.